

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Dec. 23, 2003, P.L. 250, No. 46

Cl. 72

Session of 2003

No. 2003-46

HB 200

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing, in sales and use tax, for definitions, for exclusions, for credits, for licenses and for transfers to Public Transportation Assistance Fund; further providing, in personal income tax, for definitions, for imposition, for special tax provisions for poverty, for returns and liability and for returns and records; further providing, in corporate net income tax, for definitions and for interests in unincorporated entities; providing, in corporate net income tax, for additional withholding requirements; further providing, in capital stock franchise tax, for definitions and reports, for imposition and for expiration; further providing, in utilities gross receipts tax, for imposition; further providing, in public utility realty tax, for surcharges; providing, in public utility realty tax, for additional tax; further providing, in cigarette tax, for incidence and rate of tax, for floor tax, for stamp to evidence the tax and for commissions on sales; establishing, in relation to cigarette tax, the Health Care Provider Retention Account; further providing, in research and development tax credit, for carryover, for limitations and for reports; further providing, in malt beverage tax, for limited tax credits; further providing, in inheritance tax, for definitions, for exempt transfers, for estate tax and for estate tax returns; further providing for the Public Transportation Assistance Fund and providing for its administration; further providing for estimated tax and for underpayment of estimated tax; providing for authority to attach wages; and repealing provisions relating to the Public Transportation Assistance Fund.

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

Section 1. Section 201(d) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a subclause and the section is amended by adding a clause to read:

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

* * *

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

* * *

(17) The producing of mobile telecommunications services.

* * *

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

(1) where at least one hundred and fifty 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:

(A) customer service and support;

(B) technical assistance;

(C) help desk service;

(D) providing information;

(E) conducting surveys;

(F) revenue collections; or

(G) receiving orders or reservations.

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

Section 2. Section 204 of the act is amended by adding a clause to read:

Section 204. Exclusions from Tax.--The tax imposed by section 202 shall not be imposed upon any of the following:

* * *

(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).

Section 3. Section 206 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

Section 206. Credit Against Tax.--(a) A credit against the tax imposed by [this act] **section 202** shall be granted with respect to tangible personal property or services purchased for use outside the Commonwealth equal to the tax paid to another state by reason of the imposition by such other state of a tax similar to the tax imposed by this article: Provided, however, That no such credit shall be granted unless such other state grants substantially similar tax relief by reason of the payment of tax under this article or under the Tax Act of 1963 for Education.

(b) A credit against the tax imposed by section 202 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). 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 thirty million dollars (\$30,000,000) in any fiscal year. If the total amount of tax credits applied for by all applicants exceeds the amount allocated for those credits, then the credit to be received by each applicant shall be determined as follows:

(i) Divide:

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

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

(ii) Multiply:

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

(B) the amount allocated for all tax credits.

Section 4. Section 208 of the act, amended August 4, 1991 (P.L.97, No.22), June 16, 1994 (P.L.279, No.48), June 30, 1995 (P.L.139, No.21) and June 29, 2002 (P.L.559, No.89), is amended to read:

Section 208. Licenses.--(a) 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 hitherto obtained a license from the department, shall, prior to the beginning of business thereafter, make application to the department, on a form prescribed by the department, for a license. If such 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) The department shall, after the receipt of an application, issue the license applied for under subsection (a) of this section, provided said applicant shall have 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. Such license shall be nonassignable. All licensees as of the effective date of this subsection shall be required to file for renewal of said license on or before January 31, 1992. Licenses issued through April 30, 1992, shall be based on a staggered renewal system established by the department. Thereafter, any license issued shall be valid for a period of five years.

(b.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. The department shall notify the applicant or licensee of any refusal, suspension or revocation. **Such notice shall contain a statement that the refusal, suspension or revocation may be made public.** Such notice shall be made by first class mail. An applicant or licensee aggrieved

by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this article. 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 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 of the act 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. Disclosure may include the basis for refusal, suspension or revocation.**

(c) A person that 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 three hundred dollars (\$300) nor more than one thousand five hundred (\$1,500) and, in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. The penalties imposed by this subsection shall be in addition to any other penalties imposed by this article. **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. The Secretary of Revenue may designate employes of the department to enforce the provisions of this subsection. The employes 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) Failure of any person to obtain a license shall not relieve that person of liability to pay the tax imposed by this article.

Section 5. Section 281.2 of the act, amended or added December 13, 1991 (P.L.373, No.40) and June 16, 1994 (P.L.279, No.48), is amended to read:

Section 281.2. Transfers to Public Transportation Assistance Fund.--(a) 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) Within 30 days of the close of any calendar month, .44 per cent (.0044) of the taxes received in the previous month under this article, less any amounts collected in that previous calendar month under former 74 Pa.C.S. § 1314(d) (relating to Public Assistance Transportation Fund), shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

(c) In fiscal year 1991-1992, the Secretary of Revenue will ensure that ten million dollars (\$10,000,000) is deposited in the Public Assistance Transportation Fund from the combination of revenues received under former 74 Pa.C.S. § 1314(d) and transfers of periodical taxes received under this article.

(d) Within 30 days of the close of any calendar month, .09 per cent (.0009) of the taxes received in the previous month under this article shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

(e) Within 30 days of the close of a calendar month, .417 per cent (.00417) of the taxes received in the previous month

under this article shall be transferred to the Public Transportation Assistance Fund established under Article XXIII.

Section 6. Section 301(k) of the act, amended December 23, 1983 (P.L.370, No.90), is amended to read:

Section 301. Definitions.--The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning, and, unless specifically provided otherwise, any reference in this article to the Internal Revenue Code of 1986 shall mean the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997:

* * *

(k) "Income from sources within this Commonwealth" for a nonresident individual, estate or trust means the same as compensation, net profits, gains, dividends, interest or income enumerated and classified under section 303 of this article to the extent that it is earned, received or acquired from sources within this Commonwealth:

(1) By reason [or] **of** ownership or disposition of any interest in real or tangible personal property in this Commonwealth; or

(2) In connection with a trade, profession, occupation carried on in this Commonwealth or for the rendition of personal services performed in this Commonwealth; or

(3) As a distributive share of the income of an unincorporated business, Pennsylvania S corporation, profession, enterprise, undertaking or other activity as the result of work done, services rendered or other business activities conducted in this Commonwealth, except as allocated to another state pursuant to regulations promulgated by the department under this article; or

(4) From intangible personal property employed in a trade, profession, occupation or business carried on in this Commonwealth[.]; or

(5) As gambling and lottery winnings by reason of a wager placed in this Commonwealth, the conduct of a game of chance or other gambling activity located in this Commonwealth or the redemption of a lottery prize from a lottery conducted in this Commonwealth, other than prizes of the Pennsylvania State Lottery.

Provided, however, That "income from sources within this Commonwealth" for a nonresident individual, estate or trust shall not include any items of income enumerated above received or acquired from an investment company registered with the Federal Securities and Exchange Commission under the Investment Company Act of 1940.

* * *

Section 7. Section 302 of the act, added August 4, 1991 (P.L.97, No.22), is amended to read:

Section 302. Imposition of Tax.--(a) Every resident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income hereinafter enumerated in section 303, a tax upon each dollar of income received by that resident during that resident's taxable year at the [following rates:

(1) Two and one-tenth per cent for taxable years commencing with or within calendar year 1987 through the first half of the taxable year commencing with or within calendar year 1991.

(2) Two and eight-tenths per cent for the second half of the taxable year commencing with or within calendar year 1991 and each taxable year thereafter.

(3) A temporary assessment equal to an additional three-tenths per cent for the second half of the taxable year commencing with or within calendar year 1991 through the first half of the taxable year commencing with or within calendar year 1992] **rate of three and seven hundredths per cent.**

(b) Every nonresident individual, estate or trust shall be subject to, and shall pay for the privilege of receiving each of the classes of income hereinafter enumerated in section 303 from sources within this Commonwealth, a tax upon each dollar of income received by that nonresident during that nonresident's taxable year at the [following rates:

(1) Two and one-tenth per cent for taxable years commencing with or within calendar year 1987 through the first half of the taxable year commencing with or within calendar year 1991.

(2) Two and eight-tenths per cent for the second half of the taxable year commencing with or within calendar year 1991 and each taxable year thereafter.

(3) A temporary assessment equal to an additional three-tenths per cent for the second half of the taxable year commencing with or within calendar year 1991 through the first half of the taxable year commencing with or within calendar year 1992] **rate of three and seven hundredths per cent.**

Section 8. Section 304(d) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 304. Special Tax Provisions for Poverty.--* * *

(d) Any claim for special tax provisions hereunder shall be determined in accordance with the following:

(1) If the poverty income of the claimant during an entire taxable year is six thousand five hundred dollars (\$6,500) or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is thirteen thousand dollars (\$13,000) or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of [nine thousand dollars (\$9,000)] **nine thousand five hundred dollars (\$9,500)** for each dependent of the claimant. For purposes of this subsection, a claimant shall not be considered to be married if:

(i) The claimant and the claimant's spouse file separate returns; and

(ii) The claimant and the claimant's spouse live apart at all times during the last six months of the taxable year or are separated pursuant to a written separation agreement.

(2) If the poverty income of the claimant during an entire taxable year does not exceed the poverty income limitations prescribed by clause (1) by more than the dollar category contained in subclauses (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of this clause, the claimant shall be entitled to a refund or forgiveness based on the per centage prescribed in such subclauses of any moneys which have been paid over to (or would have been except for the provisions herein be payable to) the Commonwealth under this article:

(i) Ninety per cent if not in excess of two hundred fifty dollars (\$250).

(ii) Eighty per cent if not in excess of five hundred dollars (\$500).

(iii) Seventy per cent if not in excess of seven hundred fifty dollars (\$750).

(iv) Sixty per cent if not in excess of one thousand dollars (\$1,000).

(v) Fifty per cent if not in excess of one thousand two hundred fifty dollars (\$1,250).

(vi) Forty per cent if not in excess of one thousand five hundred dollars (\$1,500).

(vii) Thirty per cent if not in excess of one thousand seven hundred fifty dollars (\$1,750).

(viii) Twenty per cent if not in excess of two thousand dollars (\$2,000).

(ix) Ten per cent if not in excess of two thousand two hundred fifty dollars (\$2,250).

(3) If an individual has a taxable year of less than twelve months, the poverty income thereof shall be annualized in such manner as the department may prescribe.

Section 9. Section 330(b)(1) of the act, amended March 26, 1991 (P.L.5, No.3), is amended to read:

Section 330. Returns and Liability.--* * *

(b) (1) In the case of an individual serving in the armed forces of the United States in an area designated by the President of the United States by Executive order as a "combat [zone] **zone,**" **as described in section 7508 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7508), as amended,** at any time during the period designated by the President by Executive order as the period of combatant activities in the combat zone or hospitalized as a result of injury received while serving in the combat zone during such time, or an individual serving in a military capacity as a result of a Federal callup to active duty or civilian capacity outside the boundary of this Commonwealth in support of such armed forces, the period of service in such area, plus the period of qualified continuous hospitalization attributable to such injury, and the next one hundred eighty days thereafter shall be disregarded in determining, under this article, in respect of any tax liability, including any interest, penalty, additional amount or addition to the tax of such individual:

(i) Whether any of the following acts were performed within the time prescribed therefor:

(A) Filing any return of income tax, except income tax withheld at source;

(B) Payment of any income tax, except income tax withheld at source or any installment thereof or of any other liability to the Commonwealth in respect thereof;

(C) Filing a petition for redetermination of a deficiency or for review of a decision rendered by the department;

(D) Allowance of a credit or refund of any tax;

(E) Filing a claim for credit or refund of any tax;

(F) Bringing suit upon any such claim for credit;

(G) Assessment of any tax;

(H) Giving or making any notice or demand for the payment of any tax or with respect to any liability to the Commonwealth in respect of any tax;

(I) Collection by the department, by levy or otherwise, of the amount of any liability in respect of any tax;

(J) Bringing suit by the Commonwealth, or any officer on its behalf, in respect of any liability in respect of any tax; and

(K) Any other act required or permitted under this article specified in regulations prescribed by the department;

(ii) The amount of any credit or refund, including interest.

* * *

Section 10. Section 335 of the act is amended by adding a subsection to read:

Section 335. Requirements Concerning Returns, Notices, Records and Statements.--* * *

(e) Any person who is required to make a form W-2G return to the Secretary of the Treasury of the United States in regard to taxable gambling or lottery winnings from sources within this Commonwealth shall file a copy of the form with the department by March 1 of each year or, if filed electronically, by March 31 of each year.

Section 11. Section 401(1)1 of the act, amended June 29, 2002 (P.L.559, No.89), is amended and the section is amended by adding a clause to read:

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

(1) "Corporation." Any of the following:

(i) A corporation.

(ii) A joint-stock association.

(iii) A business trust, limited liability company or other entity which for Federal income tax purposes is classified as a corporation.

The term does not include:

1. A business trust which qualifies as a real estate investment trust under section 856 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 856) or which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)). [or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)) shall be treated as part of the real estate investment trust which owns all of the stock of the qualified real estate investment trust subsidiary.]

* * *

(6) "Regulated financial institution." An entity subject to tax under articles VII or XV and regulated by the Pennsylvania Department of Banking, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration or the Federal Deposit Insurance Corporation.

Section 12. Section 402.2(b) of the act, amended or added June 29, 2002 (P.L.559, No.89) and December 30, 2002 (P.L.2080, No.232), is amended to read:

Section 402.2. Interests in Unincorporated Entities.--* * *

(b) Subsection (a) does not apply to a corporation's interest in an entity described in section 401(1)1 or section 401(1)2[.] **other than:**

(1) **A business trust which is a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:**

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution; or
(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

(2) A business trust which is a qualified real estate trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 owned, directly or indirectly, by a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution; or

(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

Section 12.1. The act is amended by adding a section to read:

Section 403.2. Additional Withholding Requirements.--(a)

Every partnership exercising, whether in its own name or through any person, association, business trust, corporation, joint venture, limited liability company, limited partnership, partnership or other entity, any of the privileges specified in section 402(a)(1) through (4) shall make a return for the taxable year of its net nonfiling corporate partners' shares of income and deductions.

(b) A partnership required to file a report under subsection (a) shall withhold and pay to the department a tax on behalf of its nonfiling corporate partners in an amount equal to its net nonfiling corporate partners' shares of income and deductions as reported to the Federal Government multiplied by the tax rate applicable to the taxable year being reported. Any amount withheld and paid to the department on behalf of a nonfiling corporate partner shall be considered a tax payment by that partner and credited to its account as if it was directly paid by the partner.

(c) If an amount of tax required to be withheld and paid under this section is not paid on or before the date prescribed, a penalty of five per cent of the underpayment for each month or fraction of a month from the due date to the date paid shall be added to the tax and paid to the department. The underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of the part of the tax which is paid by the beginning of that month. The total of the additions shall not exceed fifty per cent of the amount of the tax.

(d) The report required by subsection (a) shall be filed with the department in a form prescribed by the department, and the payment required by subsection (b) shall be paid to the department on or before the fifteenth day of the fourth month following the end of the taxable year.

(e) The following words, terms and phrases when used in this section shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Net nonfiling corporate partners' shares of income and deductions as reported to the Federal Government." That portion of the income, less the deductions:

(1) reported on Schedule K of the Federal Form 1065, Return of Partnership Income, filed with the Federal Government for the taxable year; and

(2) allocated on Federal Schedule K-1 to nonfiling corporate partners.

If the entire business of the partnership is not transacted in this Commonwealth, the amount computed under this definition shall be apportioned to this Commonwealth as provided in section 401(3)2 as if the partnership were a corporation subject to tax under this article.

"Nonfiling corporate partner." A partner which:

(1) is a corporation as defined in section 401; and

(2) has not filed a tax report and paid the tax required by sections 402 and 403 for the previous taxable year.

"Partner." An owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

"Partnership." An entity classified as a partnership for Federal income tax purposes.

(1) The term includes:

(i) a partnership, limited partnership, limited liability partnership or limited liability company; and

(ii) any syndicate, group, pool, joint venture, business trust, association or other unincorporated organization through or by which a business, financial operation or venture is carried on.

(2) The term does not include an entity that is:

(i) listed on a United States national stock exchange; or

(ii) described in section 401(1)1 or 2.

Section 13. The definition of "corporation" in section 601(a) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 601. Definitions and Reports.--(a) The following words, terms and phrases when used in this Article VI shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

"Corporation." (A) Any of the following entities:

(1) A corporation.

(2) A joint-stock association.

(3) A business trust.

(4) A limited liability company[, other than]. **This clause excludes** a restricted professional company which is subject to 15 Pa.C.S. Ch. 89 Subch. L (relating to restricted professional companies)[,] **and** which is deemed to be a limited partnership pursuant to 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies).

(5) An entity which for Federal income tax purposes is classified as a corporation.

(6) A business trust which is a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 856) more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution as defined by section 401(6) of Article IV; or

(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

(7) A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal

Revenue Code of 1986 owned, directly or indirectly, by a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986 more than fifty per cent of the voting power or value of the beneficial interests or shares of which are owned or controlled, directly or indirectly, by a single corporation that is not:

(i) a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1986;

(ii) a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986;

(iii) a regulated financial institution as defined by section 401(6) of Article IV; or

(iv) formed as a holding company, subsidiary or affiliate of a regulated financial institution prior to December 1, 2003.

(B) The term does not include any of the following:

(1) A business trust which qualifies as a real estate investment trust under section 856 of the Internal Revenue Code of 1986 (26 U.S.C. § 856) or which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)). [or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)) shall be treated as part of the real estate investment trust which owns all of the stock of the qualified real estate investment trust subsidiary.]

(2) A business trust which qualifies as a regulated investment company under section 851 of the Internal Revenue Code of 1986 (26 U.S.C. § 851) and which is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

(3) A corporation, trust or other entity which is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501).

(4) A corporation, trust or other entity organized as a not-for-profit organization under the laws of this Commonwealth or the laws of any other state which:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501);

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c)); or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

(5) A cooperative agricultural association subject to 15 Pa.C.S. Ch. 75 (relating to cooperative agricultural associations).

(6) A business trust if the trust is all of the following:

(i) Created or managed by an entity which is subject to the tax imposed by Article VII or XV or which is an affiliate of

the entity which shares at least eighty per cent common ownership.

(ii) Created and managed for the purpose of facilitating the securitization of intangible assets.

(iii) Classified as a partnership or a disregarded entity for Federal income tax purposes.

* * *

Section 14. Sections 602(h) and 607 of the act, amended or added June 29, 2002 (P.L.559, No.89), are amended to read:

Section 602. Imposition of Tax.--* * *

(h) The rate of tax for purposes of the capital stock and franchise tax for taxable years beginning within the dates set forth shall be as follows:(h) The rate of tax for purposes of the capital stock and franchise tax for taxable years beginning within the dates set forth shall be as follows:

Taxable Year	Regular Rate	Surtax	Total Rate
January 1, 1971, to December 31, 1986	10 mills	0	10 mills
January 1, 1987, to December 31, 1987	9 mills	0	9 mills
January 1, 1988, to December 31, 1990	9.5 mills	0	9.5 mills
January 1, 1991, to December 31, 1991	11 mills	2 mills	13 mills
January 1, 1992, to December 31, 1997	11 mills	1.75 mills	12.75 mills
January 1, 1998, to December 31, 1998	11 mills	.99 mills	11.99 mills
January 1, 1999, to December 31, 1999	10.99 mills	0	10.99 mills
January 1, 2000, to December 31, 2000	8.99 mills	0	8.99 mills
January 1, 2001, to December 31, 2001	7.49 mills	0	7.49 mills
[January 1, 2002, to December 31, 2002	7.24 mills	0	7.24mills
January 1, 2003, to December 31, 2003	6.99 mills	0	6.99 mills
January 1, 2004, to December 31, 2004	5.99 mills	0	5.99 mills
January 1, 2005, to December 31, 2005	4.99 mills	0	4.99 mills
January 1, 2006, to December 31, 2006	3.99 mills	0	3.99 mills
January 1, 2007, to December 31, 2007	2.99 mills	0	2.99 mills
January 1, 2008, to December 31, 2008	1.99 mills	0	1.99 mills
January 1, 2009, to December 31, 2009	.99 mills	0	.99 mills]
January 1, 2002, to December 31, 2003	7.24 mills	0	7.24mills
January 1, 2004, to December 31, 2004	6.99 mills	0	6.99 mills
January 1, 2005, to December 31, 2005	5.99 mills	0	5.99 mills
January 1, 2006, to December 31, 2006	4.99 mills	0	4.99 mills
January 1, 2007, to December 31, 2007	3.99mills	0	3.99 mills
January 1, 2008, to December 31, 2008	2.99 mills	0	2.99 mills

January 1, 2009, to
December 31, 2009 1.99 mills 0 1.99 mills
January 1, 2010, to
December 31, 2010 .99 mills 0 .99 mills

* * *

Section 607. Expiration.--This article shall expire for taxable years beginning after December 31, [2009] **2010**.

Section 15. The heading of Article XI is amended to read:

ARTICLE XI

[UTILITIES] GROSS RECEIPTS TAX

Section 16. Section 1101(a) of the act, amended May 24, 2000 (P.L.106, No.23), is amended and the section is amended by adding subsections to read:

Section 1101. Imposition of Tax.--(a) General Rule.--Every pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except motor vehicles and railroads, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company [and], telegraph company **or provider of mobile telecommunications services** now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone or telegraph business **or providing mobile telecommunications services** in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills with a surtax equal to five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from:

(1) passengers, baggage, oil and freight transported wholly within this State; [and]

(2) telegraph or telephone messages transmitted wholly within this State **and telegraph or telephone messages transmitted in interstate commerce where such messages originate or terminate in this State and the charges for such messages are billed to a service address in this State**, except gross receipts derived from:

(i) the sales of access to the Internet, as set forth in Article II, made to the ultimate consumer; and

(ii) the sales for resale to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this article upon gross receipts derived from such resale of telecommunications services, including:

(A) telecommunications exchange access to interconnect with a local exchange carrier's network; [and]

(B) network elements on an unbundled basis[.]; **and**

(C) sales of telecommunications services to interconnect with providers of mobile telecommunications services; and

(3) mobile telecommunications services messages sourced to this Commonwealth based on the place of primary use standard set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 117), except gross receipts derived from:

(i) the sales of access to the Internet, as set forth in Article II, made to the ultimate consumer; and

(ii) the sales for resale to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this article upon gross receipts derived from such resale of mobile telecommunications services, including sales of mobile telecommunications services to interconnect with providers of telecommunications services.

(a.1) Credit.--Telegraph or telephone companies or providers of mobile telecommunications services that pay a gross receipts tax to another state on messages or services which are taxable under this article are entitled to a credit against the tax due under this article. The credit allowed with respect to the messages or services shall not exceed the tax under this article with respect to the messages or services.

* * *

(c.1) Safe Harbor Base Year.--For purposes of the estimated tax requirements under sections 3003.2 and 3003.3, the "safe harbor base year" tax amount for providers of mobile telecommunications services shall be the amount that would have been required to be paid by the taxpayer if the taxpayer had been subject to this article.

* * *

(j) Schedule for Estimated Payments.--

(1) For calendar year 2004, the following schedule applies to the payment of the tax under subsection(a) (3):

(i) Forty per cent of the estimated tax shall be due on March 15, 2004.

(ii) Forty per cent of the estimated tax shall be due on June 15, 2004.

(iii) Twenty per cent of the estimated tax shall be due on September 15, 2004.

(2) For calendar years after 2004, the payment of the estimated tax under subsection (a) (3) shall be due in accordance with section 3003.2.

(k) Penalty for Substantial Underpayment of Initial Estimated Gross Receipts Tax.--

(1) If the amount of the estimated gross receipts tax on account of a taxpayer's first applicable taxable year under subsection (a) (3) paid by a due date in subsection (j) is underpaid, a penalty shall be imposed in the amount of five per cent of the underpayment per month for the period of the underpayment, up to a maximum of twenty-five per cent of the underpayment.

(2) The penalty imposed by this subsection is in addition to any interest imposed on underpayments by section 3003.3.

Section 17. Section 1111-A of the act, added June 29, 2002 (P.L.559, No.89), is amended to read:

Section 1111-A. Surcharge.--(a) By August 1, 2003, and by each August 1 thereafter, the Attorney General shall certify to the department a report containing the total reduction of liabilities, paid or unpaid, to the Commonwealth which are the result of a final adjudication of litigation or a settlement of litigation entered into by the Office of Attorney General for claims made under this article during the prior fiscal year.

(b) By August 1, 2003, and by each August 1 thereafter, the State Treasurer shall certify to the department a report containing the total reduction of liabilities, paid or unpaid, to the Commonwealth granted by the Board of Finance and Revenue which are the result of a final order not appealed by the department for claims made under this article during the prior fiscal year.

(c) If the total reduction of liabilities reported to the department under subsections (a) and (b) exceed five million dollars (\$5,000,000) for the fiscal year, each entity subject to the tax imposed by section 1101 shall pay to the Commonwealth a surcharge upon each dollar of the gross receipts required to be reported under section 1101, **except gross receipts from providing mobile telecommunications services and telegraph or telephone messages transmitted in interstate commerce**, at the rate determined in accordance with subsection (d) for the following calendar year.

(d) The Secretary of Revenue shall establish a surcharge rate by adding the total reduction in liabilities reported to the department under subsections (a) and (b) and dividing the sum by the total amount of taxable gross receipts reported to the department under section 1101, **except gross receipts from providing mobile telecommunications services and telegraph or telephone messages transmitted in interstate commerce**, for the prior calendar year or settled by the department as of August 1 in the year the return is due. The surcharge rate shall be rounded to four decimal places, certified by the Secretary of Revenue to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives and published by the department by October 1, 2003, and by each October 1 thereafter in the Pennsylvania Bulletin.

(e) If a surcharge is imposed for a calendar year, the secretary shall require entities subject to the surcharge to file a report consistent with the requirements of section 1101 by March 15 of that calendar year.

(f) The surcharge imposed by subsection (c) shall be paid within the time prescribed by law. Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this section insofar as they are consistent with this section and applicable to the surcharge imposed hereunder.

Section 18. The act is amended by adding a section to read:

Section 1112-A. Additional Tax.--Every entity required to pay the tax imposed under this article shall, in addition to that tax, pay an additional tax of seven and six-tenths (7.6) mills upon each dollar of the State taxable value of its utility realty.

Section 19. Sections 1206 and 1206.1 of the act, amended June 29, 2002 (P.L.559, No.89), are amended to read:

Section 1206. Incidence and Rate of Tax.--An excise tax is hereby imposed and assessed upon the sale or possession of cigarettes within this Commonwealth at the rate of [five] **six and seventy-five hundredths** cents per cigarette.

Section 1206.1. Floor Tax.--(a) A person who possesses cigarettes on which the tax imposed by section 1206 has been paid as of the effective date of this section shall pay an additional tax at a rate of [three and forty-five hundredths] **one and seventy-five hundredths** cents per cigarette. The tax shall be paid and reported on a form prescribed by the department within ninety days of the effective date of this section.

(b) If a cigarette dealer fails to file the report required by subsection (a) or fails to pay the tax imposed by subsection

(a), the department may, in addition to the interest and penalties provided in section 1278, do any of the following:

(1) Impose an administrative penalty equal to the amount of tax evaded or not paid. The penalty shall be added to the tax evaded or not paid and assessed and collected at the same time and in the same manner as the tax.

(2) Suspend or revoke a cigarette dealer's license.

(c) In addition to any penalty imposed under subsection (b), a person who wilfully omits, neglects or refuses to comply with a duty imposed under subsection (a) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), to serve a term of imprisonment not to exceed thirty days or both.

Section 19.1. The act is amended by adding a section to read:

Section 1211. Health Care Provider Retention Account.--There is established in the General Fund a special account to be known as the Health Care Provider Retention Account. Eighteen and fifty-two hundredths per cent of the proceeds of the tax imposed by section 1206 shall be deposited in the account. Funds in the account shall be subject to an annual appropriation and shall be administered as provided by law.

Section 20. Section 1215 of the act, amended June 22, 2001 (P.L.353, No.23), is amended to read:

Section 1215. Stamp to Evidence the Tax.--(a) The department shall by regulation require every cigarette stamping agency or ultimate consumer, to use cigarette tax stamps to evidence the payment of the tax imposed by this article unless such stamps have been affixed to the packs of cigarettes and properly cancelled before such cigarette stamping agency or ultimate consumer received them.

(b) The department shall by regulation authorize the sale of cigarette tax stamps at such places and at such times as it deems necessary and the department shall prescribe the manner, time and conditions under which the payment of tax shall be made.

(c) The department shall also prescribe the type of cigarette tax stamps which shall be used, to evidence payment of the tax. Nothing in this provision shall be construed as a limitation upon the department to prescribe various methods of affixing cigarette tax stamps and said department shall have the authority to prescribe one or more of several types of tax stamps which shall be used by a particular cigarette stamping agency whenever, in the reasonable exercise of its powers, it shall be deemed necessary for the protection of the revenue.

(d) Under no circumstances shall any cigarette stamping agency be permitted to sell, transfer or deliver to any person any packages of unstamped cigarettes, or any unused cigarette tax stamps unless specifically permitted by the provisions of this article.

(e) The department shall by regulation permit a cigarette stamping agency to pay for purchases on a deferred basis, upon the filing of a surety bond, of the type approved by the department, with the department, in an amount deemed sufficient by the department to protect the revenue, said bond to be executed by the cigarette stamping agency as principal and by a corporate surety company, duly authorized to engage in such business in the Commonwealth of Pennsylvania, as surety. **In lieu of the bond required by this subsection, the department shall accept other forms of security, such as a line of credit, if the department deems the security sufficient to protect the**

revenue. The department shall deny deferred purchase plans to any stamping agency in any state where such state denies stamping agencies in Pennsylvania the right to use deferred purchase plans. The department may deny any cigarette stamping agent the right to purchase cigarette tax stamps if the cigarette stamping agent is delinquent in remitting cigarette taxes or fines owed the Commonwealth.

(f) The department shall, upon application, permit a cigarette stamping agency to post a surety bond with the department for fifty per cent of the amount of the tax stamp purchase, provided that the agency has a record of timely payments of the tax for a three-year period prior to application and further provided that the agency files with the department a financial statement that demonstrates assets sufficient to protect the revenues. To preserve the discounted bond arrangement an agency may be required to provide an updated financial statement at the request of the department. If the department determines the cigarette stamping agency's financial condition and the type and amount of security posted by the cigarette stamping agency is insufficient to protect the revenue, the department may require additional security in the type and amount necessary to protect the revenue. If the cigarette stamping agency fails to post the type and amount of security requested within ten days of the mailing date of the request, the department may revoke the cigarette stamping agency's license.

Section 21. Section 1216 of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 1216. Commissions on Sales.--A cigarette stamping agent shall be entitled to a commission for the agent's services and expenses in affixing cigarette tax stamps. The commission shall be equal to [one and twenty-five hundredths] **ninety-eight hundredths** per cent of the total value of Pennsylvania cigarette tax stamps purchased by the agent from the department or its authorized agents to be used in the stamping of packages of cigarettes for sale within this Commonwealth. The cigarette stamping agent may deduct from the moneys to be paid to the department or its authorized agents for the stamps an amount equal to [one and twenty-five hundredths] **ninety-eight hundredths** per cent of the value of the stamps purchased. This section shall not apply to purchases of stamps by a cigarette stamping agent in an amount less than one hundred dollars (\$100).

Section 22. Sections 1704-B, 1709-B(a) and 1711-B of the act, added May 7, 1997 (P.L.85, No.7), are amended to read:

Section 1704-B. Carryover, Carryback, Refund and Assignment of Credit.--(a) [The amount of the research and development tax credit that a taxpayer may use against any one qualified tax liability during any year may not exceed fifty per cent of such qualified tax liability for that taxable year.] If the taxpayer cannot use the entire amount of the research and development tax credit for the taxable year in which the research and development tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the research and development tax credit is carried over to a succeeding taxable year, it is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The research and development tax credit provided by this article may be carried over and applied to succeeding taxable years for

no more than fifteen taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) A research and development tax credit approved by the department for Pennsylvania qualified research and development expense in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the research and development tax credit is applied against any tax liability under subsection (a).

(c) A taxpayer is not entitled to carry back[,] or obtain a refund of [or assign] an unused research and development tax credit.

(d) A taxpayer, upon application to and approval by the Department of Community and Economic Development, may sell or assign, in whole or in part, a research and development tax credit granted to the taxpayer under this article if no claim for allowance of the credit is filed within one year from the date the credit is approved by the department under section 1703-B. The Department of Community and Economic Development shall establish guidelines for the approval of applications under this subsection.

(e) The purchaser or assignee of a portion of a research and development tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the research and development credit that a purchaser or assignee may use against any one qualified tax liability may not exceed seventy-five per cent of such qualified tax liability for the taxable year. The purchaser or assignee may not carry over, carry back, obtain a refund of or assign the research and development tax credit. The purchaser or assignee shall notify the department of the seller or assignor of the research and development tax credit in compliance with procedures specified by the department.

Section 1709-B. Limitation on Credits.--(a) The total amount of credits approved by the department shall not exceed [fifteen million dollars (\$15,000,000)] **thirty million dollars (\$30,000,000)** in any fiscal year. Of that amount, [three million dollars (\$3,000,000)] **six million dollars (\$6,000,000)** shall be allocated exclusively for small businesses. However, if the total amounts allocated to either the group of applicants exclusive of small businesses or the group of small business applicants is not approved in any fiscal year, the unused portion will become available for use by the other group of qualifying taxpayers.

* * *

Section 1711-B. Report to General Assembly.--The secretary shall submit an annual report to the General Assembly indicating the effectiveness of the credit provided by this article no later than March 15 following the year in which the credits were approved. The report shall include the [number of] **names of all** taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized **by each taxpayer. Notwithstanding any law providing for the confidentiality of tax records, the information contained in the report shall be public information.** The report may also include any recommendations for changes in the calculation or administration of the credit.

Section 23. Section 2010 of the act, amended May 12, 1999 (P.L.26, No.4) and May 24, 2000 (P.L.106, No.23), is amended to read:

Section 2010. Limited Tax Credits.--(a) The General Assembly of the Commonwealth, conscious of the financial

pressures facing small brewers in Pennsylvania and the attendant risk of business failure and loss of employment opportunity, declares it public policy that renewal and improvement of small brewers be encouraged and assisted by a limited tax subsidy to be granted during the period set forth in this section.

(b) As used in this section:

"Amounts paid." The phrase means (i) amounts actually paid, or (ii) at the taxpayer's election, amounts promised to be paid under firm purchase contracts actually executed during any calendar year falling within the effective period of this section: Provided, however, That there shall be no duplication of "amounts paid" under this definition.

"Effective period." The period from January 1, 1974, to [December 31, 2003] **December 31, 2008**, inclusive.

"Qualifying capital expenditures." Amounts paid by a taxpayer during the effective period of this section for the purchase of items of plant, machinery or equipment for use by the taxpayer within this Commonwealth in the manufacture and sale of malt or brewed beverages: Provided, however, That the total amount of qualifying capital expenditures made by a taxpayer within a single calendar year shall not exceed two hundred thousand dollars (\$200,000).

"Secretary." The Secretary of Revenue of the Commonwealth of Pennsylvania where not otherwise qualified.

"Taxpayer." A manufacturer of malt or brewed beverages claiming a tax credit or credits under this section and having an annual production of malt or brewed beverages that does not exceed [three hundred thousand (300,000)] **one million five hundred thousand (1,500,000)** barrels.

(c) A tax credit or credits shall be allowed for each calendar year to a taxpayer, as hereinafter provided, not to exceed in total amount the amount of qualifying capital expenditures made by the taxpayer and certified by the secretary.

(d) A taxpayer desiring to claim a tax credit or credits under this section shall, **within one year of the date of the original purchase of the qualifying capital expenditures**, in accordance with regulations promulgated by the secretary, report annually to the secretary the nature, amounts and dates of qualifying capital expenditures made by him and such other information as the secretary shall require. If satisfied as to the correctness of such a report, the secretary shall issue to the taxpayer a certificate establishing the amount of qualifying capital expenditures made by the taxpayer and included within said report. The taxpayer shall also provide to the secretary the number of employes, total production of malt or brewed beverages and the amount of capital expenditures made by the taxpayer at each location operated by the taxpayer or a parent corporation, subsidiary, joint venture or affiliate. Also, the taxpayer shall notify the secretary of any contract for production held with another manufacturer. The secretary shall file a report annually with the Chief Clerk of the House of Representatives and with the Secretary of the Senate outlining the employment, production, expenditures and tax credits authorized under this section.

(e) Upon receipt from a taxpayer of a certificate from the secretary issued under subsection (c), the Secretary of Revenue shall grant a tax credit or credits in the amount certified against any tax due **under this article** in the calendar year in which the expenditures were [first] incurred or [thereafter] **against any tax** becoming due from the taxpayer under this article **in the following three calendar years**. No credit shall

be allowed against any tax due for any taxable period ending after [December 31, 2003] **December 31, 2008.**

Section 24. The definitions of "Federal estate tax" and "transfer of property for the sole use" in section 2102 of the act, added June 29, 2002 (P.L.559, No.89), are amended to read:

Section 2102. Definitions.--The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning[, and, unless specifically provided otherwise, any reference in this article to the Internal Revenue Code of 1986 shall mean the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) as amended to June 1, 2001]:

* * *

["Federal estate tax." The tax imposed under Chapter 11 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2001 et seq.) and regulations promulgated thereunder.]

* * *

"Transfer of property for the sole use." A transfer to or for the use of a transferee if, during the transferee's lifetime, the transferee is entitled to all income and principal distributions from the property and no person, including the transferee, possesses [a] **an inter vivos** power of appointment over the property.

* * *

Section 25. Section 2111(r) of the act, amended June 29, 2002 (PL.559, No.89), is amended to read:

Section 2111. Transfers Not Subject to Tax.--* * *

(r) Payments under pension, stock bonus, profit-sharing and other retirement plans, including H.R.10 plans, individual retirement accounts, individual retirement annuities and individual retirement bonds to distributees designated by the decedent or designated in accordance with the terms of the plan, are exempt from inheritance tax to the extent that the decedent before his death did not otherwise have the right to possess (including proprietary rights at termination of employment), enjoy, assign or anticipate the payment made. In addition to this exemption, whether or not the decedent possessed any of these rights, the payments are exempt from inheritance tax to the same extent that they are exempt from Federal estate tax **under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, any supplement to the code or any similar provision in effect from time to time for Federal estate tax purposes,** except that a payment which would otherwise be exempt for Federal estate tax purposes if it had not been made in a lump-sum or other nonexempt form of payment shall be exempt from inheritance tax even though paid in a lump-sum or other form of payment. The proceeds of life insurance otherwise exempt under subsection (d) shall not be subject to inheritance tax because they are paid under a pension, stock bonus, profit-sharing, H.R.10 or other retirement plan.

Section 26. Sections 2117 and 2145 of the act, amended or added August 4, 1991 (P.L.97, No.22), are amended to read:

Section 2117. Estate Tax.--(a) In the event that a Federal estate tax [would be] **is** payable to the Federal Government on the transfer of the taxable estate of a decedent who was a resident of this Commonwealth at the time of his death, and the inheritance tax, if any, actually paid to the Commonwealth by reason of the death of the decedent (disregarding interest or the amount of any discount allowed under section 2142) is less than the maximum credit for State death taxes allowable under

section 2011 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2011), a tax equal to the difference is imposed. If a resident decedent owned or had an interest in real property or tangible personal property having a situs in another state, the tax so imposed shall be reduced by the greater of:

(1) the amount of death taxes actually paid to the other state with respect to the estate of the decedent, excluding any death tax expressly imposed to receive the benefit of the credit for state death taxes allowed under section 2011 of the Internal Revenue Code of 1986 (26 U.S.C. § 2011); or

(2) an amount computed by multiplying the maximum credit for state death taxes allowable under section 2011 of the Internal Revenue Code of 1986 (26 U.S.C. § 2011) by a fraction, the numerator of which is the value of the real property and tangible personal property to the extent included in the decedent's gross estate for Federal estate tax purposes and having a situs in the other state and the denominator of which is the value of the decedent's gross estate for Federal estate tax purposes.

(b) In the event that a Federal estate tax [would be] **is** payable to the Federal Government on the transfer of the taxable estate of a decedent who was not a resident of this Commonwealth at the time of his death but who owned or had an interest in real property or tangible personal property having a situs in this Commonwealth, a tax is imposed in an amount computed by multiplying the maximum credit for State death taxes allowable under section 2011 of the Internal Revenue Code of 1986 (26 U.S.C. § 2011) by a fraction, the numerator of which is the value of the real property and tangible personal property to the extent included in the decedent's gross estate for Federal estate tax purposes having a situs in this Commonwealth and the denominator of which is the value of the decedent's gross estate for Federal estate tax purposes, and deducting from that amount the inheritance tax, if any, actually paid to the Commonwealth (disregarding interest or the amount of any discount allowed under section 2142).

(c) When an inheritance tax is imposed after an estate tax imposed under subsection (a) or (b) has been paid, the estate tax paid shall be credited against any inheritance tax later imposed.

Section 2145. Estate Tax Return.--(a) The person or persons required by section 2136 to make the inheritance tax return shall be initially liable for payment of the estate tax.

(b) The personal representative of every decedent or, if there is no personal representative, any other fiduciary [that would be chargeable] **charged** by law with the duty of filing a Federal estate tax return, within [ten months after the decedent's death] **one month of the filing or receipt of the return** shall file with the register or, if the decedent was a nonresident, with the register who issued letters, if any, in this Commonwealth, or otherwise with the department, a [tax return prescribed by the department, any return filed under section 6018 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6018) as amended] **copy of the decedent's Federal estate tax return** and of any communication from the Federal Government making any final change in the return or of the tax due. The assessment of estate tax shall be made by the register or department within three months after the filing of the documents required to be filed and, if not so made, shall be made within an additional period as the court, upon

application of any party in interest, including the personal representative, shall fix.

(c) The estate tax is due at the date of the decedent's death but shall not become delinquent until the expiration of nine months after decedent's death. Any estate tax occasioned by a final change in the Federal return or of the tax due shall not become delinquent until the expiration of one month after the person or persons liable to pay the tax have received final notice of the increase in the Federal estate tax.

(d) No discount shall be allowed in paying the estate tax.

(e) If the estate tax is not paid before the date it becomes delinquent under subsection (c), interest on the unpaid tax shall be charged after the date of delinquency at the rate established in section 2143.

(f) The estate tax shall be apportioned and ultimately borne in accordance with the provisions of 20 Pa.C.S. Ch. 37 (relating to apportionment of death taxes) unless otherwise provided by this article or in the instrument of transfer.

(g) When the decedent was a resident, the estate tax shall be paid to the register. When the decedent was a nonresident, the estate tax shall be paid to the register who issued letters, if any, in this Commonwealth; otherwise, it shall be paid to the department.

Section 27. Section 2301 of the act, amended or added July 1, 1994 (P.L.413, No.67) and May 12, 1999 (P.L.26, No.4), is amended to read:

Section 2301. Public Transportation Assistance Fund.--(a) There is hereby created a special fund in the State Treasury to be known as the Public Transportation Assistance Fund. Moneys deposited into the fund and interest which accrues from those funds shall be used for the purposes delineated in 74 Pa.C.S. § 1310 (relating to distribution of funding).

(b) Funds received under the provisions of this section, as estimated and certified by the Secretary of Revenue, shall be deposited within five days of the end of each month into the fund. Unless otherwise specifically noted, the provisions of Article II shall apply to the fees and taxes imposed by subsections (c), (d) and (e). [Unless otherwise specifically noted, the provisions of Article XI-A shall apply to the tax imposed under subsection (f).]

(c) There is hereby imposed a fee on each sale in this Commonwealth of new tires for highway use at the rate of one dollar (\$1) per tire. The fee shall be collected by the seller from the purchaser and remitted to the Department of Revenue. No exclusions or exemptions, other than those for governmental entities provided under Article II, shall apply to the fees and taxes imposed by this section.

(d) (1) There is hereby imposed on each lease of a motor vehicle subject to tax under Article II an additional tax of three per cent of the total lease price charged.

(2) As used in this subsection on and after April 1, 1995, the term "motor vehicle" does not include trucks in Class 4 or higher as defined in 75 Pa.C.S. § 1916(a) (1) (relating to trucks and truck tractors).

(e) There is hereby imposed on each rental of a motor vehicle subject to tax under Article II a fee of two dollars (\$2) for each day or part of a day for which the vehicle is rented.

[(f) Every entity required to pay the tax imposed under Article XI-A shall, in addition to that tax, pay an additional tax of seven and six-tenths (7.6) mills upon each dollar of the State taxable value of its utility realty.]

Section 28. The act is amended by adding a section to read:

Section 2302. Administration.--For fiscal years beginning after June 30, 2003, the Department of Revenue shall not make any transfers into or out of the Public Transportation Assistance Fund to adjust for prior year payments, credits, refunds or appeals.

Section 29. Section 3003.2(a)(5), (b) introductory paragraph, (1) and (4.2), (c)(5) and (g) of the act, amended June 29, 2002 (P.L.559, No.89), are amended to read:

Section 3003.2. Estimated Tax.--(a) The following taxpayers are required to pay estimated tax:

* * *

(5) Every person subject to the tax imposed by Article XI of this act shall make payments of estimated [utilities] gross receipts tax during its taxable year.

* * *

(b) The following words, terms and phrases when used in [sections 3003.2 through 3003.4 of this article] **this section and section 3003.3** shall have the following meanings ascribed to them:

(1) "Estimated tax." Estimated corporate net income tax, estimated capital stock and franchise tax, estimated mutual thrift institution tax, estimated insurance premiums tax, estimated [utilities] gross receipts tax or estimated public utility realty surcharge.

* * *

(4.2) "Estimated [utilities] gross receipts tax." The amount which the taxpayer estimates as the amount of tax imposed by section 1101 of Article XI for the taxable year.

* * *

(c) Estimated tax shall be paid as follows:

* * *

(5) Payment of the estimated [utilities] gross receipts tax shall be made in a single installment on or before the fifteenth day of March of the taxable year. The remaining portion of the [utilities] gross receipts tax due, if any, shall be paid upon the date the annual report is required to be filed without reference to any extension of time for filing the report.

* * *

(g) For all purposes of [sections 3003.2 through 3003.4 of this article] **this section and section 3003.3**, estimated corporate net income tax, estimated capital stock and franchise tax, estimated mutual thrift institutions tax, estimated insurance premiums tax, estimated [utilities] gross receipts tax and estimated public utility realty surcharge shall be separately reported, determined and treated.

* * *

Section 30. Section 3003.3(d) of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

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

(d) Notwithstanding the provisions of the preceding subsections, interest with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the safe harbor base year, adjusted for any changes to sections 401, 601 [and], 602 **and 1101** enacted for

the taxable year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. Provided, that if the settled tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the settled tax adjusted to reflect the current tax rate shall be used for purposes of this subsection, except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any petition by the department or by the taxpayer. In the event that the settled or resettled tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of such settled or resettled tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of such settlement or resettlement, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to such settled or resettled tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the settled or resettled tax for the safe harbor base year, the tax will be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

Section 31. The act is amended by adding a section to read:

Section 3003.15. Authority to Attach Wages, Commissions and Other Earnings.--(a) The Department of Revenue may, upon the presentation of a written notice and demand certifying that the information contained within is true and correct and containing the name of the taxpayer and the amount of delinquent State tax due plus the department's costs, demand, receive and collect the amount from any entity:

(1) employing persons owing delinquent State taxes; or
(2) having in its possession unpaid commissions or earnings belonging to any person or persons owing delinquent State taxes.

(b) Subject to the limitations in subsection (c), upon the receipt of a written notice and demand pursuant to subsection (a), an entity shall deduct from the wages of an individual employe the amount shown on the notice and shall forward the amount to the department within sixty days after receipt of the notice.

(c) No more than ten per cent of the wages of an individual employe who is a delinquent taxpayer may be deducted at any one time for delinquent State taxes and costs. The entity is entitled to deduct from the amount collected from the individual employe the costs incurred by the entity for the extra bookkeeping necessary to record the transactions but not to exceed two per cent of the amount collected from the individual employe.

(d) Upon the failure of an entity to deduct or forward an amount required under this section within the time period

required under subsection (b), the entity shall pay the amount of the delinquent State tax and costs for each individual employe who is a delinquent taxpayer subject to a demand in addition to a penalty in accordance with section 352(h). An entity paying delinquent taxes, costs and a penalty pursuant to this subsection shall not have the benefit of any stay of execution or exemption law.

(e) The following words, terms and phrases when used in this section shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Entity." The United States, the Commonwealth or any of its political subdivisions, a corporation, an association, a company, a firm or an individual.

"Wages." Any wages, commissions or earnings of an individual employe:

- (1) which are currently owed to the individual employe;
- (2) which shall become due within sixty days of receipt of a written notice and demand pursuant to subsection (b);
- (3) any unpaid commissions or earnings of an individual employe in the entity's possession; or
- (4) any unpaid commissions or earnings of an individual employe that comes into the entity's possession within sixty days of receipt of a written notice and demand pursuant to subsection (a).

Section 32. By April 1, 2004, the Department of Revenue shall submit a detailed report to the chairman and minority chairman of the Appropriations Committee and the Finance Committee of the Senate and the chairman and minority chairman of the Appropriations Committee and the Finance Committee of the House of Representatives outlining the plans and costs concerning a Statewide tax clearance for licenses, permits and registrations. The report shall include all of the following:

(1) The amount of State revenue necessary to perform tax clearances for all licenses, permits and registrations for the department, the Department of Labor and Industry, the Department of Environmental Protection, the Department of Banking, the Department of State, the Insurance Department and the Pennsylvania Securities Commission. The amount needed shall be itemized, and all costs, including personnel, office expenses and other related costs, shall be included.

(2) The number of licenses, permits and registrations for each agency and the costs associated with the program by agency.

(3) The source of funds which will be utilized to pay for the tax clearance program.

(4) The legal issues concerning the propriety of restricting or revoking a license, permit or registration due to the delinquency of a tax owed.

(5) The number of other states which have a similar law in effect and the success or deficiencies of the law.

(6) Proposed draft legislation concerning tax clearance.

(7) A detailed timetable on when separate tasks must be completed for full implementation on an estimated start date.

Section 33. This act shall apply as follows:

(1) The addition of section 201(d)(17) of the act shall apply to sales at retail and uses after June 30, 2004.

(2) The amendment of section 281.2 of the act shall apply to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

(3) The amendment of section 301(k) of the act shall apply to taxable years beginning after December 31, 2003.

(4) The amendment of section 302 of the act shall apply to taxable years beginning after December 31, 2003.

(5) The amendment of section 304(d) of the act shall apply to taxable years beginning after December 31, 2003.

(6) The amendment of section 330 of the act shall apply retroactively to taxable years beginning after December 31, 2001.

(7) The amendment of section 335 of the act shall apply to taxable years beginning after December 31, 2003.

(8) The following shall apply:

(i) The deletion of the phrase "or a related business trust which confines its activities in this Commonwealth to the maintenance, administration, and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries" from section 401(1)1 of the act shall apply to tax years beginning after December 31, 2003.

(ii) The deletion of the sentence "A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)) shall be treated as part of the real estate investment trust which owns all of the stock of the qualified real estate investment trust subsidiary." in section 401(1)1 of the act shall apply retroactively to June 29, 2002, and shall be considered as a codification of the law then in effect.

(9) The amendment of section 402.2(b) of the act shall apply to tax years beginning after December 31, 2003.

(10) The addition of section 403.2 of the act shall apply to taxable years beginning after December 31, 2003.

(11) The following shall apply:

(i) The amendment of clause (A)(4) in the definition of "corporation" in section 601(a) of the act shall apply retroactively to June 29, 2002, and shall be considered as a codification of the law then in effect.

(ii) The addition of clause (A)(6) and (7) in the definition of "corporation" in section 601(a) of the act shall apply to taxable years beginning after December 31, 2003.

(iii) The deletion of the phrase "or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries" from clause (B)(1) in the definition of "corporation" in section 601(a) of the act shall apply to tax years beginning after December 31, 2003.

(iv) The deletion of the sentence "A business trust which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code of 1986 (26 U.S.C. § 856(i)) shall be treated as part of the real estate investment trust which owns all of the stock of the qualified real estate investment trust subsidiary." in clause (B)(1) in the definition of "corporation" in section 601(a) of the act shall apply retroactively to June 29, 2002, and shall be considered as a codification of the law then in effect.

(12) The amendment of section 1101 of the act shall apply to gross receipts derived from transactions occurring after December 31, 2003.

(12.1) The addition of section 1112-A of the act shall apply to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

(13) The amendment of section 1704-B(a) of the act shall apply to taxable years beginning after December 31, 2004.

(14) The amendment or addition of section 1704-B(c), (d) and (e) of the act shall apply to credits awarded after December 31, 2002.

(15) The amendment of section 1709-B(a) of the act shall apply to credits awarded after December 31, 2003.

(16) The amendment of section 1711-B of the act shall apply to credits awarded after December 31, 2003.

(17) The following provisions shall apply to the estates of decedents who die after June 30, 2002:

(i) The amendment of the definitions of "Federal estate tax" and "transfer of property for the sole use" in section 2102 of the act.

(ii) The amendment of section 2111(r) of the act.

(iii) The amendment of section 2117 of the act.

(iv) The amendment of section 2145 of the act.

(18) The amendment of section 2301 of the act shall apply to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

(19) The addition of section 2302 of the act shall apply to deposits into the Public Transportation Assistance Fund made after June 30, 2003.

Section 34. The provisions of 66 Pa.C.S. § 2810(c)(7) are repealed.

Section 35. This act shall take effect as follows:

(1) The amendment or addition of sections 1206, 1206.1, 1211, 1215 and 1216 of the act shall take effect January 7, 2004.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 23rd day of December, A. D. 2003.

EDWARD G. RENDELL