

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Oct. 9, 2009, P.L. 451, No. 48

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Session of 2009

No. 2009-48

HB 1531

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," in sales and use tax, further providing for exclusions, for time for filing returns and for time of payment; in personal income tax, further providing for classes of income, reenacting provisions on contributions and further providing for operational provisions and for payment of withheld taxes; in corporate net income tax, further providing for definitions; in capital stock franchise tax, further providing for definitions and reports, for imposition and for expiration; in gross receipts tax, further providing for imposition; in cigarette tax, further providing for definitions, for incidence and rate, for floor tax, for liability for collection of tax, for the Health Care Provider Retention Account, for stamp to evidence tax and for commissions on sales and providing for return and payment of tax for unstamped cigarettes and further providing for sales of unstamped cigarettes, for possession of unstamped cigarettes and for other violations; in research and development tax credit, further providing for carrying of credit; providing for educational improvement tax credit; repealing tax amnesty provisions; providing for reduction of tax credits; providing for tax amnesty for fiscal year 2009-2010; providing for penalties for corporate officers and for examination of books and records; and making related repeals.

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

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding clauses to read:

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

* * *

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

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

Section 2. Section 217 of the act, amended July 1, 1985 (P.L.78, No.29), is amended to read:

Section 217. Time for Filing Returns.--(a) Quarterly [and], Monthly **and Semi-monthly** Returns:

(1) For the year in which this article becomes effective and in each year thereafter a return shall be filed quarterly by every licensee on or before the twentieth day of April, July, October and January for the three months ending the last day of March, June, September and December.

(2) For the year in which this article becomes effective, and in each year thereafter, 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 six hundred dollars (\$600) **and is less than twenty-five thousand dollars (\$25,000)**. Such returns shall be filed on or before the twentieth day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

(3) **After May 31, 2011, a return shall be filed semi-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 twenty-five thousand dollars (\$25,000). For the period from the first day of the month to the fifteenth day of the month, the returns shall be filed on or before the twenty-fifth day of the month. For the period from the sixteenth day of the month to the last day of the month, the returns shall be filed on or before the tenth day of the next succeeding month with respect to which the return is made. Any licensee required to file semi-monthly returns under this section shall be relieved from filing monthly or 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 sixty days prior to the end of the year with respect to which the returns are made. Where such annual returns are required licensees shall not be required to file such returns prior to the twentieth day of the year succeeding the year with respect to which the returns are made.

(c) Other Returns. Any person, other than a licensee, liable to pay to the department any tax under this article, shall file a return on or before the twentieth day of the month succeeding the month in which such person becomes liable for the tax.

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

Section 3. Section 222 of the act is amended to read:

Section 222. Time of Payment.--(a) Monthly, [Bimonthly] **Semi-monthly** and Quarterly Payments. The tax imposed by this article 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 217 and such payment must accompany the return for such 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 him in connection with his monthly, **semi-monthly** or quarterly returns he shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other Payments. Any person other than a licensee liable to pay any tax under this article shall remit the tax at the time of filing the return required by this article.

Section 4. Section 303(a.6) of the act, added July 6, 2006 (P.L.319, No.67), is amended to read:

Section 303. Classes of Income.--* * *

(a.6) Except as provided in this article and without regard to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code of 1986, the requirements of sections 106(b) and (d), 220 and 223 of the Internal Revenue Code of 1986[, as amended to January 1, 2005,] shall be applicable.

* * *

Section 5. Section 315.2 of the act, amended July 9, 2008 (P.L.922, No.66), is reenacted to read:

Section 315.2. Contributions to Breast and Cervical Cancer Research.--(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to be utilized for breast and cervical cancer research.

(b) The amount so designated on the individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Pennsylvania Breast Cancer Coalition.

(d) The department shall provide adequate information concerning the checkoff for breast and cervical cancer research in its instructions which accompany State income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds. Additionally, the Pennsylvania Breast Cancer Coalition shall be charged with the duty to conduct a public information campaign on the availability of this opportunity to Pennsylvania taxpayers.

(e) The Pennsylvania Breast Cancer Coalition shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) The General Assembly may, from time to time, appropriate funds for breast and cervical cancer research.

Section 5.1. Section 315.7 of the act, added November 23, 2004 (P.L.935, No.133), is reenacted to read:

Section 315.7. Contributions for Juvenile Diabetes Cure Research.--(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to be utilized for juvenile diabetes cure research related to:

- (1) restoring normal blood sugar levels;
- (2) preventing and reversing complications; or
- (3) preventing juvenile diabetes.

(b) The amount so designated on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) (1) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer, who shall transfer the amount to a restricted revenue account within the General Fund to be used by the Department of Health for aiding juvenile diabetes cure research.

(2) The Department of Health shall distribute the amounts to institutions of higher education and independent research institutes of this Commonwealth to support projects that have been subject to an established peer and scientific review process identical or similar to the National Institutes of Health review system.

(d) The department shall provide adequate information concerning the checkoff for juvenile diabetes cure research in its instructions which accompany the Pennsylvania income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds.

(e) The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

Section 5.2. Section 315.9 of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

Section 315.9. Operational Provisions.--[(a) Except for the checkoff established under sections 315.2, 315.6 and 315.7 and except as otherwise provided under subsection (b), the checkoffs established under this part shall apply through taxable years ending December 31, 2007.]

(b) [Any] **Except as set forth in subsection (b.1), any** checkoff established under this part and applicable for the first time in a taxable year beginning after December 31, [2003] **2009**, shall expire four years after the beginning of such first taxable year.

(b.1) Notwithstanding subsection (b), the checkoffs established in sections 315.2 and 315.7 shall not expire.

(c) Sections 315.3 [and], 315.4 and 315.8 shall expire January 1, [2010] **2014**.

Section 6. Section 319 of the act, repealed and added August 31, 1971 (P.L.362, No.93), is amended to read:

Section 319. [Monthly, Semi-monthly and Quarterly] Payment of Taxes Withheld.--Every employer withholding tax under this article shall pay over to the department or to a depository designated by it the tax required to be deducted and withheld under this article.

(1) Where the aggregate amount required to be deducted and withheld by any employer for [each quarterly period] **a calendar year** can reasonably be expected to be less than [three hundred dollars (\$300)] **twelve hundred dollars (\$1,200)**, such employer shall file a return and pay the tax on or before the last day for filing a quarterly return under section 318.

(2) Where the aggregate amount required to be deducted and withheld by any employer for [each quarterly period] **a calendar year** can reasonably be expected to be [three hundred dollars (\$300) or more but less than one thousand dollars (\$1,000)] **twelve hundred dollars (\$1,200) or more but less than four thousand dollars (\$4,000)**, such employer shall pay the tax monthly, on or before the fifteenth day of the month succeeding

the months of January to November, inclusive, and on or before the last day of January following the month of December.

(3) Where the aggregate amount required to be deducted and withheld by any employer for [each quarterly period] **a calendar year** can reasonably be expected to be [one thousand dollars (\$1,000) or more] **four thousand dollars (\$4,000) or more but less than twenty thousand dollars (\$20,000)**, such employer shall pay the tax semi-monthly, within three banking days after the close of the semi-monthly period.

(4) **Where the aggregate amount required to be deducted and withheld by any employer for a calendar year can reasonably be expected to be twenty thousand dollars (\$20,000) or more, such employer shall pay the tax on the Wednesday after payday if the payday falls on a Wednesday, Thursday or Friday and on the Friday after payday if the payday falls on a Saturday, Sunday, Monday or Tuesday.**

Notwithstanding anything in this section to the contrary, whenever any employer fails to deduct or truthfully account for or pay over the tax withheld or file returns as prescribed by this article, the department may serve a notice on such employer requiring him to withhold taxes which are required to be deducted under this article and deposit such taxes in a bank approved by the department in a separate account in trust for and payable to the department, and to keep the amount of such tax in such account until payment over to the department. Such notice shall remain in effect until a notice of cancellation is served on the employer by the department.

Section 7. Section 401(3)2(a)(9) and 4(c) of the act, amended July 12, 2006 (P.L.1137, No.116), are amended 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:

* * *

(3) "Taxable income." * * *

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

(a) Division of Income.

* * *

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

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

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

(iii) **For taxable years beginning after December 31, 2008, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of eight and a half times the property factor, eight**

and a half times the payroll factor and eighty-three times the sales factor and the denominator of which is one hundred.

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

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

* * *

4. * * *

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

(A) (I) For taxable years beginning before January 1, 2007, two million dollars (\$2,000,000);

(II) For taxable years beginning after December 31, 2006, the greater of twelve and one-half per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000); [or]

(III) For taxable years beginning after December 31, 2008, the greater of fifteen per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000);

(IV) For taxable years beginning after December 31, 2009, the greater of twenty per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000); or

(B) The amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2.

(1.1) In no event shall the net loss deduction include more than five hundred thousand dollars (\$500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

(2) (A) A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable years starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
1995-1997	10 taxable years
1998 and thereafter	20 taxable years

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

(I) Two million dollars (\$2,000,000) for taxable years beginning before January 1, 2007.

(II) The greater of twelve and one-half per cent of the taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000) for taxable years beginning after December 31, 2006.

(III) **The greater of fifteen per cent of the taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000) for taxable years beginning after December 31, 2008.**

(IV) **The greater of twenty per cent of the taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000) for taxable years beginning after December 31, 2009.**

* * *

Section 7.1. The definition of "capital stock value" in section 601 of the act, amended July 6, 2006 (P.L.319, No.67), 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:

* * *

"Capital stock value." The amount computed pursuant to the following formula: the product of one-half times the sum of the average net income capitalized at the rate of nine and one-half per cent plus seventy-five per cent of net worth, from which product shall be subtracted [one hundred fifty thousand dollars (\$150,000)] **one hundred sixty thousand dollars (\$160,000)**, the algebraic equivalent of which is

$$(.5 \times (\text{average net income} / .095 + (.75) (\text{net worth}))) - [\$150,000] \quad \mathbf{\$160,000}$$

* * *

Section 8. Section 602(h) of the act, amended July 6, 2006 (P.L.319, No.67), is 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:

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, 2003	7.24 mills	0	7.24 mills
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	4.89 mills 0	4.89 mills
January 1, 2007, to		
December 31, 2007	3.89 mills 0	3.89 mills
[January 1, 2008, to		
December 31, 2008	2.89 mills 0	2.89 mills
January 1, 2009, to		
December 31, 2009	1.89 mills 0	1.89 mills
January 1, 2010, to		
December 31, 2010	.89 mills 0	.89 mills]
January 1, 2008, to		
December 31, 2011	2.89 mills 0	2.89 mills
January 1, 2012, to		
December 31, 2012	1.89 mills 0	1.89 mills
January 1, 2013, to		
December 31, 2013	.89 mills 0	.89 mills

* * *

Section 9. Section 607 of the act, amended December 23, 2003 (P.L.250, No.46), is amended to read:

Section 607. Expiration.--This article shall expire for taxable years beginning after December 31, [2010] **2013**.

Section 9.1. Section 1101(c), (c.1), (e) and (j) of the act, amended or added August 4, 1991 (P.L.97, No.22), December 23, 2003 (P.L.250, No.46) and October 18, 2006 (P.L.1149, No.119), are amended and the section is amended by adding a subsection to read:

Section 1101. Imposition of Tax.--* * *

(b.1) Managed Care Organizations.--Every managed care organization now or hereafter incorporated or organized by or under any law of the Commonwealth or a political subdivision thereof, 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 that is a party to a Medicaid managed care contract with the Department of Public Welfare shall pay to the State Treasurer, through the Department of Revenue, a tax of 59 mills upon each dollar of the gross receipts received from payments pursuant to a Medicaid managed care contract with the Department of Public Welfare through its Medical Assistance Program under Subchapter XIX of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.). This subsection shall also apply to a Medicaid managed care organization, as defined in section 1903(m) (1) (A) of the Social Security Act (42 U.S.C. § 1396b(m) (1) (A)); to a county Medicaid managed care organization; and to a permitted assignee of a Medicaid managed care contract. This subsection shall not apply to an assignor of a Medicaid managed care contract. The revenue collected under this subsection shall be placed in a restricted receipts account in the General Fund and is appropriated as an augmentation to the capitation appropriation of the Department of Public Welfare. If the Centers for Medicare and Medicaid Services of the Department of Health and Human Services issues a written determination of a deferral, disallowance or disapproval of Federal financial participation on the grounds that the tax imposed under this subsection constitutes an impermissible health care-related tax under Subchapter XIX of the Social Security Act, the Secretary of Public Welfare shall notify the Secretary of Revenue of that determination. If notification is made under this paragraph, the tax under this subsection shall cease to be imposed after the last day of the month in which notification is made.

(c) Payment of Tax; Reports.--The said taxes imposed under subsections (a) [and], (b) **and (b.1)** shall be paid within the

time prescribed by law, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, copartnership, limited partnership, association, joint-stock association or corporation, or person or persons, to transmit to the Department of Revenue on or before March 15 of each year an annual report, and under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, associations, joint-stock associations, limited partnerships, person or persons, derived from all sources, and of gross receipts from business done wholly within this State and in the case of electric energy producers that transmit energy to other states referred to in clause (2) of subsection (b), a compilation of the relevant information regarding operating and maintenance expenses and depreciation, during the period of twelve months immediately preceding January 1 of each year. [It shall be the further duty of the treasurer or other proper officer of every such corporation or association and every individual liable by law to report or pay said taxes imposed under subsections (a) and (b) except municipalities to transmit to the Department of Revenue on or before April 30 of each year, a tentative report in like form and manner for each twelve-month period beginning January 1, of each year. The tentative report shall set forth (i) the amount of gross receipts received in the period of twelve months next preceding and reported in the annual report; or (ii) the gross receipts received in the first three months of the current period of twelve months; and (iii) such other information as the Department of Revenue may require.]

(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 **and for a managed care organization subject to the provisions of subsection (b.1)** shall be the amount that would have been required to be paid by the taxpayer if the taxpayer had been subject to this article.

* * *

(e) Time to File Reports.--The time for filing annual reports may be extended, estimated assessments may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsections (a) [and], (b) **and (b.1)** shall be as prescribed by the laws defining the powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed under subsections (a) [and], (b) **and (b.1)** shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be

held liable for any tax imposed under subsections (a) [and], (b) **and (b.1)** upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

* * *

(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.

(3) For calendar year 2009, the tax applicable to the payment of the tax under subsection (b.1) shall be due on March 15, 2010.

(4) For calendar year 2010, payments of the estimated tax under subsection (b.1) shall be due on May 15, 2010. For calendar year 2011 and each calendar year thereafter, the payment of the estimated tax under subsection (b.1) shall be due in accordance with section 3003.2.

* * *

Section 9.2. The definitions of "cigarette" and "unstamped cigarettes" in section 1201 of the act, added December 21, 1981 (P.L.482, No.141), are amended and the section is amended by adding definitions to read:

Section 1201. Definitions.--As used in this article:

* * *

"Cigarette." Any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of any substance or material other than tobacco regardless of the size or shape of the roll and regardless of whether or not the tobacco is flavored, adulterated or mixed with any other ingredient ; **or a little cigar.**

* * *

"Little cigar." Any roll for smoking that weighs not more than four pounds per thousand, where the wrapper or cover is made of natural leaf tobacco or of any substance containing tobacco.

* * *

"Retailer." Any of the following:

(1) Any person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer.

(2) Any person who, in the usual course of business, owns, leases or otherwise operates one or more vending machines for the purpose of sale of cigarettes to the ultimate consumer.

(3) Any person who buys, sells, transfers or deals in cigarettes for profit and is not licensed as a cigarette stamping agency or wholesaler under Article II-A of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

* * *

"Unstamped cigarettes." Any pack of cigarettes to which the proper amount of genuine Pennsylvania cigarette tax stamps have not been affixed **or any cigarette for which the proper amount of cigarette tax imposed under this article has not been paid.** Any pack of cigarettes containing a forged, bogus or counterfeit

Pennsylvania cigarette tax stamp or any pack of cigarettes bearing stolen, lost or misplaced genuine Pennsylvania cigarette tax stamps which have not been affixed to said pack of cigarettes by a proper cigarette stamping agency as provided for in this article, or any pack of cigarettes bearing genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of evading the payment of the Pennsylvania cigarette tax shall be considered, under the provisions of this article, to be a package of "unstamped cigarettes."

* * *

"Wholesaler." Any of the following:

(1) Any person that meets all of the following:

(i) In the usual course of business, purchases cigarettes from a cigarette stamping agent or other wholesaler and receives, stores, sells and distributes within this Commonwealth at least seventy-five per cent of the cigarettes purchased by him or her to retail dealers or wholesale dealers or any combination who buys the cigarettes from him or her for the purpose of resale to the ultimate consumer.

(ii) Maintains an established place of business for the receiving, storage and distribution of cigarettes.

(2) Any person that meets all of the following:

(i) Is engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing the cigarette vending machines, owned or leased by him, in various outlets within this Commonwealth.

(ii) Pays to the owner or lessee of the premises a commission or rental for the use of the premises.

(iii) Operates at least ten vending machines.

(iv) Meets all the other requirements for licensing of wholesalers under Article II-A of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," including maintaining an established place of business for the receiving, storage and distribution of cigarettes.

(3) Any person, including a franchisee, that meets all of the following:

(i) Owns and operates no fewer than five retail outlets in this Commonwealth, having one hundred per cent common ownership.

(ii) Purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer.

(iii) Maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.

Section 9.3. Sections 1206 and 1206.1 of the act, amended December 23, 2003 (P.L.250, No.46), 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 [six and seventy-five hundredths] **eight** cents per cigarette.

Section 1206.1. Floor Tax.--(a) **The following apply:**

(1) 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 [one and seventy-five] **one and twenty-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.

(2) On or after the effective date of this paragraph, a person that possesses little cigars in a package which is similar to a package of cigarettes other than little cigars and which contains twenty to twenty-five little cigars shall pay a

tax at the rate of eight cents per little cigar. The tax shall be paid and reported on a form prescribed by the department within ninety days of the effective date of this paragraph.

(3) After January 3, 2010, a retailer that possesses little cigars on which the tax imposed by this article has not been paid shall pay a tax at the rate of eight cents per little cigar. The tax shall be paid and reported on a form prescribed by the department within ninety days of the effective date of this paragraph.

(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 9.4. Section 1210 of the act, added December 21, 1981 (P.L.482, No.141), is amended to read:

Section 1210. Liability for Collection of Tax.--(a) Every person shall be liable to pay into the State Treasury, through the department, the tax imposed by this article on all cigarettes received by him to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this article. Nothing in this section shall relieve a cigarette stamping agency from its liability to pay the tax imposed by this article on all cigarettes received by it to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this article.

(b) For sales to a retailer of cigarettes not required to be stamped under section 1215, the retailer shall be required to pay the tax imposed by this article to the wholesaler or other seller of the cigarettes. The wholesaler or other seller shall be liable to collect and remit the tax to the department. Failure of the seller or retailer to obtain the applicable license shall not relieve the seller or retailer of the liability to pay the tax imposed under this article.

Section 9.5. Sections 1211, 1215 and 1216 of the act, amended or added December 23, 2003 (P.L.250, No.46), are amended 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 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 **unstamped**

cigarettes and properly cancelled before such cigarette stamping agency or ultimate consumer received them **or unless otherwise provided in subsection (g)**.

(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.

(g) Stamps shall be affixed to all individual packages containing from twenty to twenty-five cigarettes. Individual packages containing less than twenty or more than twenty-five

cigarettes shall have stamps affixed unless the department determines the affixing of stamps is physically impractical due to the size or nature of the package or determines that the cost of affixing the stamps is unreasonably disproportionate to the tax to be collected.

(h) Where the department has determined that a cigarette package is not required to be stamped under subsection (g), the tax shall be collected on the sale of the cigarette from the wholesaler to the retailer. To verify the payment of this tax, the following shall be required:

(1) The wholesaler must maintain documentation to show the monthly total number of unstamped cigarette packages purchased and sold listed by brand name and how many cigarettes were in each unstamped cigarette package.

(2) The wholesaler must maintain a copy of a paid manufacturer's or other wholesaler's dated invoices to substantiate the total number of cigarettes purchased by the wholesaler. The invoices must list the total quantities of every different brand name purchased, the total number of each type of package of each brand name, the number of cigarettes in each package, the purchase price and any other information the department may require.

(3) Every invoice to a retailer must list all the information required in paragraph (2) along with the amount of tax charged on each package of cigarettes sold to the retailer.

(i) For purposes of determining the weight of little cigars, a person shipping little cigars within or into this Commonwealth shall provide the department with the weight per thousand shipped, segregated by brand name, package type, number per package and any other information required by the department. This information shall be reported on a form prescribed by the department and shall be filed with the department within fourteen days of shipment or on a schedule determined by the department by regulation. If the person shipping the little cigars into this Commonwealth is not the manufacturer, the person shall obtain the information as to the weight of the little cigars from the manufacturer and report the weight on the form and by the date referred to in this subsection.

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 [ninety-eight] **eighty-seven** 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] **unstamped** 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 [ninety-eight] **eighty-seven** 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 9.6. The act is amended by adding a section to read:

Section 1216.1. Return and Payment of Tax for Unstamped Cigarettes.--(a) By the twentieth day of each month, every person selling unstamped cigarettes to retailers shall file a return with the department reporting the tax imposed by this article on the sales of unstamped cigarettes in the prior calendar month.

(b) By the twentieth day of each month, every person purchasing unstamped cigarettes on which the tax imposed by this article was not paid to the seller or wholesaler shall

file a return with the department reporting the amount of tax due on the purchase of unstamped cigarettes in the prior calendar month.

(c) The return shall be on a form prescribed by the department and must contain any information required by the department.

(d) When a return of tax is required under this section, the person required to file the return shall pay the tax to the department on the date the return is due.

(e) Unless otherwise specifically noted, the provisions of Article II shall apply to the returns, payment, penalties, enforcement, collections and appeals of the tax imposed on unstamped cigarettes.

Section 9.7. Sections 1272 and 1273 of the act, added December 21, 1981 (P.L.482, No.141), are amended to read:

Section 1272. Sales of Unstamped Cigarettes.--(a) Any person who shall sell any [pack of] **unstamped** cigarettes [which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps] shall, upon conviction in a summary proceeding be sentenced to pay costs of prosecution and a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1000) or to suffer imprisonment for a term of not more than sixty days, or both, at the discretion of the court.

(b) Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax, sell any [pack of] **unstamped** cigarettes [which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps] shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than fifteen thousand dollars (\$15,000), plus costs of prosecution or to suffer imprisonment for a term of not more than five years, or both, at the discretion of the court.

(c) For the purposes of this section, the sale of **unstamped** cigarettes [having affixed thereto genuine Pennsylvania cigarette tax stamps] for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall be considered an illegal sale subjecting the seller to the penalties provided in subsection (b).

Section 1273. Possession of Unstamped Cigarettes.--(a) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this article who shall possess more than two hundred but less than one thousand **unstamped** cigarettes[, packages of which do not have affixed thereto the proper amount of genuine cigarette tax stamps] shall be guilty of a summary offense and upon conviction thereof shall pay a fine of three hundred dollars (\$300), plus costs of prosecution or to suffer imprisonment for not more than ninety days, or both, at the discretion of the court.

(b) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this article who shall possess one thousand or more **unstamped** cigarettes[, the packages of which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps] shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not less than one thousand dollars (\$1000) nor more than fifteen thousand dollars (\$15,000) and costs of prosecution or to suffer imprisonment for not more than three years, or both, at the discretion of the court.

(c) Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax possess any [pack of] **unstamped** cigarettes [which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps] shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) and costs of prosecution and to suffer imprisonment for a term of not more than five years.

(d) Every person other than a common carrier engaged in interstate commerce who shall possess or transport more than two hundred unstamped cigarettes upon the public highways, roads or streets of this Commonwealth, shall be required to have in his possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets shall show the correct date of purchase or shipment, true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes so transported and the true name and complete and exact address of the person who shall assume the payment of the Pennsylvania State tax or the tax, if any, of the state or foreign country at the point of ultimate destination. If the cigarettes are consigned to or purchased by any person in the Commonwealth of Pennsylvania such consignee or purchaser must be a licensed cigarette stamping agency or otherwise authorized by this article to possess unstamped cigarettes within the boundaries of this Commonwealth. The absence of such invoices or delivery tickets shall be prima facie evidence that the possession of such cigarettes is contrary to the provisions of this article and shall subject the possessor to the penalties imposed herein.

(e) In the absence of such invoices or delivery tickets or, if the name or address of the purchaser or consignor is falsified, or if the purchaser or consignee in this Commonwealth is not authorized to possess unstamped cigarettes then and in that event the cigarettes so transported shall be subject to confiscation at the discretion of the Secretary of Revenue as is more fully described in section 1285.

(f) For the purpose of this section the possession of genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall be considered a violation of this article subjecting the possessor thereof to the penalties provided in subsection (c).

(g) Transportation of cigarettes from a point outside of this Commonwealth to a final destination outside of this Commonwealth shall not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession invoices, bills of lading or delivery tickets which give the true name and true address of such out-of-state consignor or seller and such out-of-state consignee or purchaser: Provided, however, That such consignor or consignee shall be authorized by the laws of such states to receive or possess cigarettes on which the taxes imposed by such other states have not been paid.

(h) In any case, where agents of the department have reason to believe that any vehicle is carrying or transporting cigarettes in violation of this article, then and in that event, the agents of the department shall be and are hereby authorized to stop such vehicle, make an inspection and confiscate all such unstamped or improperly stamped cigarettes found therein

and confiscate the vehicle used to transport such unstamped or improperly stamped cigarettes.

Section 9.8. Section 1278 of the act, amended or added December 21, 1981 (P.L.482, No.141) and June 22, 2001 (P.L.353, No.23), is amended to read:

Section 1278. Other Violations.--(a) Any person who wilfully omits, neglects, or refuses to comply with any duty imposed upon him by this article or does anything prohibited by this article for which no specific penalty is otherwise provided, shall upon conviction in a summary proceeding be sentenced to pay a fine not to exceed five hundred dollars (\$500) and costs of prosecution, and, in default of payment thereof, to undergo imprisonment for not more than thirty days.

(b) Any person who wilfully omits or neglects to **file any return required or** pay any tax imposed by this article, or attempts in any manner to evade or defeat the tax or payment thereof, shall, in addition to any other penalty provided in this article, be liable to a penalty equal to the amount of tax evaded or not paid, which penalty shall be added to the tax and assessed and collected at the same time in the same manner as a part of the tax.

(c) Any person who fails to **file any required return or** pay tax at the time prescribed shall, in addition to any other penalty provided in this article, be liable to a penalty of five per cent of the tax due but unpaid for each month or fraction thereof the tax remains unpaid together with the interest at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," on such tax from the time the tax became due. The penalties provided in this subsection shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.

Section 9.9. Section 1704-B of the act, amended December 23, 2003 (P.L.250, No.46), is amended to read:

Section 1704-B. Carryover, Carryback, Refund and Assignment of Credit.--(a) 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 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 9.10. The act is amended by adding an article to read:

ARTICLE XVII-F

EDUCATIONAL IMPROVEMENT TAX CREDIT

Section 1701-F. Scope of article.

This article establishes the educational improvement tax credit.

Section 1702-F. Definitions.

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

"Business firm." An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term includes a pass-through entity.

"Contribution." A donation of cash, personal property or services, the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the services.

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

"Educational improvement organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual receipts as grants to a public school for innovative educational programs.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"Eligible pre-kindergarten student." A student, including an eligible student with a disability, who is enrolled in a pre-kindergarten program and is a member of a household with a maximum annual household income as increased by the applicable income allowance.

"Eligible student." A school-age student, including an eligible student with a disability, who is enrolled in a school and is a member of a household with a maximum annual household income as increased by the applicable income allowance.

"Eligible student with a disability." A pre-kindergarten student or a school-age student who meets all of the following:

(1) Is either enrolled in a special education school or has otherwise been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability," as defined in 34 CFR § 300.8 (relating to child with a disability).

(2) Needs special education and related services.

(3) Is enrolled in a pre-kindergarten program or in a school.

(4) Is a member of a household with a household income of not more than the maximum annual household income.

"Household." An individual living alone or with the following: a spouse, parent and their unemancipated minor children, other unemancipated minor children who are related by blood or marriage or other adults or unemancipated minor children living in the household who are dependent upon the individual.

"Household income." All moneys or property received of whatever nature and from whatever source derived. The term does not include the following:

(1) Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.

(2) Disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government.

(3) Payments commonly recognized as old-age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment.

(4) Payments commonly known as public assistance or unemployment compensation payments by a governmental agency.

(5) Payments to reimburse actual expenses.

(6) Payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

(7) Compensation received by United States servicemen serving in a combat zone.

"Income allowance."

(1) As follows:

(i) Before July 1, 2011, \$10,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(ii) After June 30, 2011, \$12,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(2) Beginning July 1, 2012, the Department of Community and Economic Development shall annually adjust the income allowance amounts under paragraph (1) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Innovative educational program." An advanced academic or similar program that is not part of the regular academic program of a public school but that enhances the curriculum or academic program of the public school or provides pre-kindergarten programs to public school students.

"Maximum annual household income."

(1) Except as set forth in paragraph (2), as follows:

(i) Before July 1, 2011, not more than \$50,000.

(ii) After June 30, 2011, not more than \$60,000.

(2) With respect to an eligible student with a disability, as calculated by multiplying:

(i) the sum of:

(A) the applicable amount under paragraph (1);

and

(B) the applicable income allowance; by

(ii) the applicable support level factor according to the following table:

Support Level	Support Level Factor
1	1.50
2	2.993

(3) Beginning July 1, 2012, the Department of Community and Economic Development shall annually adjust the income amounts under paragraphs (1) and (2) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Pass-through entity." A partnership as defined in section 301(n.0), a single-member limited liability company treated as a disregarded entity for Federal income tax purposes or a Pennsylvania S corporation as defined in section 301(n.1).

"Pre-kindergarten program." A program of instruction for three-year-old or four-year-old students that utilizes a curriculum aligned with the curriculum of the school with which it is affiliated and which provides one of the following:

(1) A minimum of two hours of instructional and developmental activities per day at least 60 days per school year.

(2) A minimum of two hours of instructional and developmental activities per day at least 20 days over the summer recess.

"Pre-kindergarten scholarship organization." A nonprofit entity which:

(1) either is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate segregated fund by a scholarship organization that has been qualified under section 1703 -F ; and

(2) contributes at least 80% of its annual cash receipts to a pre-kindergarten scholarship program by expending or otherwise irrevocably encumbering those funds for distribution during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

"Pre-kindergarten scholarship program." A program to provide tuition to eligible pre-kindergarten students to attend a pre-kindergarten program operated by or in conjunction with a school located in this Commonwealth and that includes an application and review process for the purpose of making awards to eligible pre-kindergarten students and awards scholarships to eligible pre-kindergarten students without limiting availability to only students of one school.

"Public school." A public pre-kindergarten where compulsory attendance requirements do not apply or a public kindergarten, elementary school or secondary school at which the compulsory attendance requirements of this Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

"Scholarship organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual cash receipts to a scholarship program.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts to a scholarship program when it expends or otherwise irrevocably encumbers those funds for distribution during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"Scholarship program." A program to provide tuition to eligible students to attend a school located in this Commonwealth. A scholarship program must include an application and review process for the purpose of making awards to eligible students. The award of scholarships to eligible students shall be made without limiting availability to only students of one school.

"School." A public or nonpublic pre-kindergarten, kindergarten, elementary school or secondary school at which the compulsory attendance requirements of the Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

"School age." Children from the earliest admission age to a school's pre-kindergarten or kindergarten program or, when no pre-kindergarten or kindergarten program is provided, the school's earliest admission age for beginners, until the end of the school year the student attains 21 years of age or graduation from high school, whichever occurs first.

"Special education school." A school or program within a school that is designated specifically and exclusively for students with any of the disabilities listed in 34 CFR § 300.8 (relating to child with a disability) and meets one of the following:

- (1) Is licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act.
- (2) Is accredited by an accrediting association approved by the State Board of Education.
- (3) Is a school for the blind or deaf receiving Commonwealth appropriations.
- (4) Is operated by or under the authority of a bona fide religious institution or by the Commonwealth or any political subdivision thereof.

"Support level." The level of support needed by an eligible student with a disability, as set forth in the following matrix:

Support Level 1 - The student is not enrolled in a special education school.

Support Level 2 - The student is enrolled as a student in a special education school.

Section 1703-F. Qualification and application.

(a) Establishment.--In accordance with section 14 of Article III of the Constitution of Pennsylvania, an educational improvement tax credit program is hereby established to enhance the educational opportunities available to all students in this Commonwealth.

(b) Information.--In order to qualify under this article, a scholarship organization, a pre-kindergarten scholarship organization or an educational improvement organization must submit information to the department that enables the department to confirm that the organization is exempt from taxation under

section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(c) Scholarship organizations and pre-kindergarten scholarship organizations.--A scholarship organization or pre-kindergarten scholarship organization must certify to the department that the organization is eligible to participate in the program established under this article and must agree to annually report the following information to the department by December 1, 2005, and September 1 of each year thereafter:

(1) (i) The number of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(ii) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(iii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(iv) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

(vi) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

(vii) Where the scholarship organization or pre-kindergarten scholarship organization collects information on a county-by-county basis, the total number and the total amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization or pre-kindergarten scholarship organization awarded scholarships.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than September 1, 2005, and May 1 of each year thereafter, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization and pre-kindergarten scholarship organization.

(3) The department may not require any other information to be provided by scholarship organizations or pre-kindergarten scholarship organizations, except as expressly authorized in this article.

(d) Educational improvement organization.--

(1) An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. The department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application. In order to be eligible to participate in the program established under this article, an educational improvement organization must agree to annually report the following information to the department by December 1, 2005, and September 1 of each year thereafter:

(i) The name of the innovative educational program or programs and the total amount of the grant or grants

made to those programs during the immediately preceding school year.

(ii) A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements.

(iii) The names of the public schools and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented.

(iv) Where the educational improvement organization collects information on a county-by-county basis, the total number and the total amount of grants made during the immediately preceding school year for programs at public schools in each county in which the educational improvement organization made grants.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than September 1, 2005, and May 1 of each year thereafter, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed educational improvement organization.

(3) The department may not require any other information to be provided by educational improvement organizations, except as expressly authorized in this article.

(e) Notification.--The department shall notify the scholarship organization, pre-kindergarten scholarship organization or educational improvement organization that the organization meets the requirements of this article for that fiscal year no later than 60 days after the organization has submitted the information required under this section.

(f) Publication.--The department shall annually publish a list of each scholarship organization, pre-kindergarten scholarship organization or educational improvement organization qualified under this section in the Pennsylvania Bulletin. The list shall also be posted and updated as necessary on the publicly accessible Internet website of the department.

Section 1704-F. Application.

(a) Scholarship organization or pre-kindergarten scholarship organization.--A business firm shall apply to the department for a tax credit under section 1705-F. A business firm shall receive a tax credit under this article if the scholarship organization or pre-kindergarten scholarship organization that receives the contribution appears on the list established under section 1703-F(f).

(b) Educational improvement organization.--A business firm must apply to the department for a credit under section 1705-F. A business firm shall receive a tax credit under this article if the department has approved the program provided by the educational improvement organization that receives the contribution.

(c) Availability of tax credits.--Tax credits under this article shall be made available by the department on a first-come, first-served basis within the limitation established under section 1706-F(a).

(d) Contributions.--A contribution by a business firm to a scholarship organization, pre-kindergarten scholarship organization or educational improvement organization shall be made no later than 60 days following the approval of an application under subsection (a) or (b).

Section 1705-F. Tax credit.

(a) Scholarship or educational improvement organizations.--In accordance with section 1706-F(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV to a business firm providing proof of a contribution to a scholarship organization or educational improvement organization in the taxable year in which the contribution is made which shall not exceed 75% of the total amount contributed during the taxable year by the business firm. Such credit shall not exceed \$300,000 annually per business firm for contributions made to scholarship organizations or educational improvement organizations.

(b) Additional amount.--The Department of Revenue shall grant a tax credit of up to 90% of the total amount contributed during the taxable year if the business firm provides a written commitment to provide the scholarship organization or educational improvement organization with the same amount of contribution for two consecutive tax years. The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) Pre-kindergarten scholarship organizations.--In accordance with section 1706-F(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV to a business firm providing proof of a contribution to a pre-kindergarten scholarship organization in the taxable year in which the contribution is made which shall be equal to 100% of the first \$10,000 contributed during the taxable year by the business firm, and which shall not exceed 90% of the remaining amount contributed during the taxable year by the business firm. Such credit shall not exceed \$150,000 annually per business firm for contributions made to pre-kindergarten scholarship organizations.

(d) Combination of tax credits.--A business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under subsection (a) or (b) or (c). In no case may a business firm receive tax credits in any tax year in excess of \$300,000 for contributions under subsections (a) and (b). In no case shall a business firm receive tax credits in any tax year in excess of \$150,000 for contributions under subsection (c).

(e) Pass-through entity.--

(1) If a pass-through entity does not intend to use all approved tax credits under this section, it may elect in writing to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled for use in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made. The election shall designate the year in which the transferred credits are to be used and shall be made according to procedures established by the Department of Revenue.

(2) A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under this section for the same contribution.

(3) The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

(f) Restriction on applicability of credits.--No credits granted under this section shall be applied against any tax withheld by an employer from an employee under Article III.

(g) Time of application for credits.--

(1) Except as provided in paragraphs (2) and (3), the department may accept applications for tax credits available during a fiscal year no earlier than July 1 of each fiscal year.

(2) The application of any business firm for tax credits available during a fiscal year as part of the second year of a two-year commitment may be accepted no earlier than May 15 preceding the fiscal year.

(3) The application under subsection (a) of any pass-through entity for approval of single-year tax credits available during a fiscal year against the taxes imposed under Article III or under subsection (b) for approval of credits against such taxes for the first year of a two-year commitment may be accepted by the department no earlier than the first business day following July 7 of the fiscal year.

Section 1706-F. Limitations.

(a) Amount.--

(1) The total aggregate amount of all tax credits approved shall not exceed \$67,000,000 in a fiscal year. No less than \$44,666,667 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations. No less than \$22,333,333 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

(2) (i) For the fiscal years 2004-2005, 2005-2006 and 2006-2007, the total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$5,000,000 in a fiscal year.

(ii) For the fiscal year 2007-2008 and each fiscal year thereafter, the total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$8,000,000 in a fiscal year.

(b) Activities.--No tax credit shall be approved for activities that are a part of a business firm's normal course of business.

(c) Tax liability.--

(1) Except as provided in paragraph (2), a tax credit granted for any one taxable year may not exceed the tax liability of a business firm.

(2) In the case of a credit granted to a pass-through entity which elects to transfer the credit according to section 1705-F(e), a tax credit granted for any one taxable year and transferred to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or partner.

(d) Use.--A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder, member or partner to whom the credit was transferred under section 1705-F(e) may not be carried forward or carried back and is not refundable or transferable.

(e) Nontaxable income.--A scholarship received by an eligible student or eligible pre-kindergarten student shall not be considered to be taxable income for the purposes of Article III.

Section 1707-F. Lists.

The Department of Revenue shall provide a list of all scholarship organizations, pre-kindergarten scholarship organizations and educational improvement organizations receiving contributions from business firms granted a tax credit

under this article to the General Assembly by June 30th of each year.

Section 1708-F. Guidelines.

The department in consultation with the Department of Education shall develop guidelines to determine the eligibility of an innovative educational program.

Section 10. Article XXIX-A of the act, added June 30, 1995 (P.L.139, No.21), is amended to read:

[ARTICLE XXIX-A

TAX AMNESTY PROGRAM

Section 2901-A. 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:

"Amnesty period." The time period of ninety consecutive days established by the Governor during the fiscal year beginning July 1, 1995, and ending June 30, 1996.

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

"Eligible tax." Any tax imposed by the Commonwealth for deposit in the General Fund or the Motor License Fund or the Liquid Fuels Tax Fund for taxes delinquent as of December 31, 1993. The term includes any interest or penalty on an eligible tax. The term excludes any tax imposed by a political subdivision.

"Program." The tax amnesty program as provided for in this article.

"Taxpayer." Any person, association, fiduciary, partnership, corporation or other entity required to pay or collect any of the eligible taxes. The term shall not include a taxpayer who, prior to the amnesty period has received notice that he is the subject of a criminal investigation for an alleged violation of any law imposing an eligible tax or who, prior to the amnesty period, has been named as a defendant in a criminal complaint alleging a violation of any law imposing an eligible tax or is a defendant in a pending criminal action for an alleged violation of any law imposing an eligible tax.

Section 2902-A. Establishment of Amnesty Program.--(a) There is hereby established a tax amnesty program which shall be administered by the department.

(b) The program shall apply to a taxpayer who is delinquent on payment of a liability for an eligible tax as of June 1, 1995, including a liability for returns not filed, liabilities according to records of the department as of June 1, 1995, liabilities not reported, underreported or not established, but delinquent as of June 1, 1995.

Section 2903-A. Required Payment.--(a) Subject to section 2904-A, all taxpayers who participate in the program shall comply with all of the following:

(1) During the amnesty period, file a tax amnesty return in such form and containing such information as the department shall require. A tax amnesty return shall be considered to be timely filed if it is postmarked during the amnesty period.

(2) During the amnesty period, make payment of all taxes and interest due the Commonwealth in accordance with the tax amnesty return that is filed.

(3) File complete tax returns for all years for which the taxpayer previously has not filed a tax return and file complete amended returns for all years for which the taxpayer underreported eligible tax liability.

(b) The department shall not collect the penalties owed by a taxpayer who participates in the program under subsection (a). The department shall not pursue an administrative or

judicial proceeding against a taxpayer with respect to any eligible tax that is disclosed on a tax amnesty return.

Section 2904-A. Amnesty Contingent on Continued Compliance.--Notwithstanding any other provision of this article, the department may assess and collect from a taxpayer all penalties foregone through the tax amnesty program established in this article if, within two years after the end of the amnesty program, either of the following occurs:

(1) the taxpayer granted amnesty under this article becomes delinquent for three consecutive periods in payment of taxes due or filing of returns required on a semimonthly, monthly, quarterly or other basis and the taxpayer has not contested the tax liability through a timely valid administrative or judicial appeal; or

(2) the taxpayer granted amnesty under this article becomes delinquent and is eight or more months late in payment of taxes due or filing of returns on an annual basis and the taxpayer has not contested the liability through a timely valid administrative or judicial appeal.

Section 2905-A. Limitation of Deficiency Assessment.--If, subsequent to the amnesty period, the department issues a deficiency assessment with respect to a tax amnesty return, the department shall have the authority to impose penalties and to pursue a criminal action only with respect to the difference between the amount shown on that tax amnesty return and the current amount of tax.

Section 2906-A. Overpayment of Tax.--Notwithstanding any other provisions of this or any other act, if an overpayment of eligible tax is refunded or credited within one hundred eighty days after the tax amnesty return is filed, no interest shall be allowed on the overpayment.

Section 2907-A. Previously Paid Interest and Penalties.--No refund or credit shall be allowed for any interest or penalty on eligible taxes paid to the department prior to the amnesty period.

Section 2908-A. Proceedings Relating to Tax Amnesty Return Barred.--Participation in the program is conditioned upon the taxpayer's agreement that the right to protest or pursue an administrative or judicial proceeding with regard to tax amnesty returns filed under the program or to claim any refund of money paid under the program is barred.

Section 2909-A. Undisclosed Liabilities.--Nothing in this article shall be construed to prohibit the department from instituting civil or criminal proceedings against any taxpayer with respect to any amount of tax that is not disclosed on the tax amnesty return.

Section 2910-A. Duties of Department.--(a) The department shall develop regulations to implement the provisions of this article. The regulations must be published in the Pennsylvania Bulletin within ninety days of the effective date of this article and shall contain, but not be limited to, the following information:

(1) An explanation of the program and the requirements for eligibility for the program.

(2) The dates during which a tax amnesty return may be filed.

(3) A specimen copy of the tax amnesty return.

(b) The department shall publicize the program to maximize public awareness of and participation in the program. The department shall coordinate to the highest degree possible its publicity efforts and other actions taken to implement this article.

(c) Report.--The department shall issue a report to the General Assembly within one hundred eighty days after the end of the amnesty period detailing the implementation of the program. The report shall contain, but not be limited to, the following information:

(1) A detailed breakdown of the department's administrative costs in implementing the program.

(2) The number of tax amnesty returns filed and a breakdown of the number and dollar amount of revenue raised for each tax by calendar year during which the tax period ended. In addition, the gross revenues shall be broken down into the following categories:

(i) Amounts represented by assessments receivable established by the department on or before the first day of the amnesty period.

(ii) All other amounts.

(3) The total dollar amount of revenue collected by the program.

(4) The total dollar amount of penalties forgiven under the program.

(5) The demographic characteristics of tax amnesty participants, including standard industrial codes of participants, type of taxpayer (individual, partnership, corporation or other entity), size of tax liability and geographical location.

(d) The department shall notify in writing all known tax delinquents at their last known address of the existence of the tax amnesty program. The sole purpose of the letter sent by the department to taxpayers must be notification of the program.

Section 2911-A. Method of Payment.--All tax payments under the program shall be made by certified check, money order, cash or its equivalent.

Section 2912-A. Exemption from Review Process.--Notwithstanding any law to the contrary, the regulations issued by the department for the program shall be exempt from the regulatory review process provided in the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

Section 2913-A. Use of Revenue.--All revenue generated by this article shall be deposited into a restricted revenue account in the General Fund. Revenue from the restricted revenue account shall be distributed as follows:

(1) Repayment of any cost for administration of the program to the department.

(2) An amount not exceeding sixty-seven million dollars (\$67,000,000) from General Fund sources shall be deposited into the General Fund. If delinquent tax collections in the General Fund for fiscal year 1995-1996 fall below the level of the previous year, an additional amount equal to the difference shall be deposited into the General Fund.

(3) All revenue from Motor License Fund sources shall be deposited in the Motor License Fund no later than June 30, 1996.

(4) All revenue from Liquid Fuels Tax Fund sources shall be deposited in the Liquid Fuels Tax Fund no later than June 30, 1996.

Section 2914-A. Penalties for Certain Corporate Officers.--If an officer or officers of a corporation or association intentionally neglect or refuse to make reports to the Auditor General, or to the department, or successively to the Auditor General and to the department, as required by law, for any two successive tax years, the officer or officers commit 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). This fine shall be in addition to any fine or prison sentence under section 1704 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 2915-A. Further Examination of Books and Records.--(a) The department or any of its authorized agents is hereby authorized to examine the books, papers and records of any taxpayer or other persons in order to verify the accuracy and completeness of any return or report made or, if no return or report was made, to ascertain and assess any tax or other liability owed the Commonwealth.

(b) The department may determine, by desk, field or other audit, the amount of tax or other liability required to be paid to the Commonwealth. The department may determine the liability based upon the facts contained in the return or report being audited or other information in the department's possession. The department may determine the liability based upon a reasonable statistical sample or test audit performed in accordance with the regulations of the department when the individual being audited does not have complete records of transactions or when the review of each transaction or invoice would place an undue burden on the department to conduct an audit in a timely and efficient manner.

(c) The taxpayer may challenge the accuracy of a statistical sample or test audit by providing clear and convincing evidence that the method used for a statistical sample or test audit is erroneous, lacks a rational basis or produces a different result when the complete records are considered.

Section 2916-A. Additional Penalty.--(a) Subject to the limitations provided under subsection (b), a penalty of fifteen per cent of the unpaid tax liability and penalties and interest shall be levied against a taxpayer subject to an eligible tax if the taxpayer had failed to remit an eligible tax due or had an unreported or underreported liability for an eligible tax on or after the first day following the end of the amnesty period.

(b) The penalty provided in this section shall not apply to a taxpayer who:

(1) has paid the liability in full or entered into a duly approved and executed deferred payment plan on or before the last day of the amnesty period; or

(2) has filed a timely and valid administrative or judicial appeal contesting the liability on or before the last day of the amnesty period.

(c) The penalty provided by this section shall be in addition to all other penalties provided by law.

Section 2917-A. Application of Penalty and Powers.--Sections 2914-A and 2915-A of this article shall apply to all taxes collected by the department.

Section 2918-A. Construction.--Except as expressly provided in this article, this article shall not:

(1) be construed to relieve any person, corporation or other entity from the filing of returns or from any taxes, penalties or interest imposed by the provisions of any laws;

(2) affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws; or

(3) prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement,

collection or recovery of taxes, penalties or interest due to the Commonwealth under any such laws.

Section 2919-A. Suspension of Inconsistent Acts.--All acts or parts of acts inconsistent with the provisions of this article are suspended to the extent necessary to carry out the provisions of this article.]

Section 11. The act is amended by adding articles to read:

**ARTICLE XXIX-D
(RESERVED)**

**ARTICLE XXIX-E
REDUCTION OF TAX CREDITS**

Section 2901-E. Applicability of article.

This article shall apply to tax credits awarded in fiscal years 2009-2010 and 2010-2011.

Section 2902-E. Reduction.

(a) Article XVII-D.--For the tax credit established under Article XVII-D, the amount available to be awarded pursuant to section 1707-D(a) shall be reduced from \$75,000,000 per fiscal year to \$42,000,000 in fiscal year 2009-2010 and to \$60,000,000 in fiscal year 2010-2011.

(b) Article XVII-F.--For the tax credit established under Article XVII-F, the amount available to be awarded pursuant to section 1706-F(a) shall be reduced from \$75,000,000 per fiscal year to \$60,000,000 in fiscal year 2009-2010 and to \$50,000,000 in fiscal year 2010-2011. The amount available to be awarded under section 1706-F(a) (1) and (2) shall be as follows:

(1) The total aggregate amount of all tax credits approved shall not exceed \$53,600,000 in fiscal year 2009-2010. No less than \$37,967,000 of the total aggregate amount shall be used to provide tax credits from contributions from business firms to scholarship organizations. No less than \$15,633,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

(2) The total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$6,400,000 in fiscal year 2009-2010.

(3) The total aggregate amount of all tax credits approved shall not exceed \$44,670,000 in fiscal year 2010-2011. No less than \$33,502,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations. No less than \$11,168,000 of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

(4) The total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$5,330,000 in fiscal year 2010-2011.

Notwithstanding section 1704-F(c), in fiscal year 2009-2010, if valid applications for tax credits received by the Department of Community and Economic Development before October 1, 2009, exceed the limitation under this section, tax credits shall be made available on a pro-rata basis to all valid applications received before October 1, 2009.

(c) Article XVII-B.--For the tax credit established under Article XVII-B, the amounts available to be awarded pursuant to section 1709-B(a) shall be equal to 50% of the maximum amounts otherwise available for award in fiscal year 2009-2010

and 45% of the maximum amounts otherwise available for award in fiscal year 2010-2011.

(d) Certain other credits.--For the tax credits established under section 206(b) and Articles XVII-A, XVII-E, XVIII-B and XIX-A and under Chapter 5 Subchapter B and Chapter 9 of the act of December 1, 2004 (P.L.1750, No.226), known as the First Class Cities Economic Development District Act, the amounts available for award to each eligible taxpayer shall be determined such that the total amount available for award shall be 50% of the amounts otherwise available for award in total pursuant to the applicable sections or articles in fiscal year 2009-2010, and 45% of the amounts otherwise available for award in total pursuant to all applicable sections or articles in fiscal year 2010-2011.

(e) Hiatus.--Notwithstanding any other provision of law, a taxpayer is not entitled to a tax credit under Chapter 7 of the act of July 9, 2008 (1st Sp.Sess., P.L.1873, No.1), known as the Alternative Energy Investment Act .

ARTICLE XXIX-F
TAX AMNESTY PROGRAM FOR
FISCAL YEAR 2009-2010

Section 2901-F. 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:

"Amnesty period." The period from April 26, 2010, through June 18, 2010, inclusive. The estimates under section 2910-F(a) shall be completed 30 days prior to April 26, 2010.

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

"Eligible tax." Any tax administered by the Department of Revenue delinquent as of June 30, 2009. The term includes any interest or penalty on an eligible tax. For an unknown liability, the term shall only include taxes due within five years prior to June 30, 2009. For purposes of taxes collected under the International Fuel Tax Agreement, the term shall apply only to taxes, interest and penalties owed to the Commonwealth, not to other states or Canadian provinces.

"Program." The tax amnesty program established under section 2902-F as provided for in this article.

"Taxpayer." Any person, association, fiduciary, partnership, corporation or other entity required to pay or collect any of the eligible taxes. The term shall not include a taxpayer who, prior to the amnesty period, has received notice that the taxpayer is the subject of a criminal investigation for an alleged violation of any law imposing an eligible tax or who, prior to the amnesty period, has been named as a defendant in a criminal complaint alleging a violation of any law imposing an eligible tax or is a defendant in a pending criminal action for an alleged violation of any law imposing an eligible tax.

"Unknown liability." A liability for an eligible tax for which either:

(1) no return or report has been filed, no payment has been made and the taxpayer has not been contacted by the department concerning the unfiled returns or reports or unpaid tax; or

(2) a return or report has been filed, the tax was underreported and the taxpayer has not been contacted by the department concerning the underreported tax.

Section 2902-F. Establishment of program.

(a) Program established.--There is established a tax amnesty program which shall be administered by the department.

(b) Applicability.--The program shall apply to a taxpayer who is delinquent on payment of a liability for an eligible tax as of June 30, 2009, including a liability for returns not filed, liabilities according to records of the department as of June 30, 2009, liabilities not reported, underreported or not established, but delinquent as of June 30, 2009.

(c) Future amnesty program participation.--A taxpayer who participates in the program shall not be eligible to participate in a future tax amnesty program.

(d) Deferred payment plan agreement.--Existing deferred payment plan agreements between a taxpayer and the department where the agreement applies to a tax liability for which amnesty is sought by the taxpayer for amounts remaining on the tax liability, the taxpayer, as a condition of receiving amnesty, shall pay the liability, notwithstanding terms of the agreement to the contrary, in full during the amnesty period.

Section 2903-F. Required payment.

(a) Taxpayer requirements.--Subject to section 2904-F, all taxpayers who participate in the program shall comply with all of the following:

(1) During the amnesty period, file a tax amnesty return in such form and containing such information as the department shall require. A tax amnesty return shall be considered to be timely filed if it is postmarked during the amnesty period or timely electronically or otherwise filed.

(2) During the amnesty period, make payment of all taxes and one-half of the interest due to the Commonwealth in accordance with the tax amnesty return that is filed. The taxpayer shall not be required to pay any penalty applicable to an eligible tax.

(3) File complete tax returns for all required years for which the taxpayer previously has not filed a tax return and file complete amended returns for all required years for which the taxpayer underreported eligible tax liability.

(b) Prohibitions.--

(1) The department shall not collect the penalties or interest waived under subsection (a) (2). Except as otherwise provided in this article, the department shall not pursue any administrative or judicial proceeding against a taxpayer with respect to any eligible tax that is disclosed on a tax amnesty return.

(2) A taxpayer with unknown liabilities reported and paid under this program and who complies with all other requirements of this article shall not be liable for any taxes of the same type due prior to July 1, 2004. A taxpayer shall not be owed a refund under this article.

(c) Financial hardship.--A taxpayer otherwise eligible for amnesty who certifies on an amnesty return that making payment of the full amount of the liability for which amnesty is sought at the time such return is made would create a severe financial hardship for such taxpayer, shall retain eligibility for amnesty if:

(1) Fifty percent or more of the amount due as computed is paid with the amnesty return or within the amnesty period.

(2) The balance due, including interest under subsection (a) (2), is paid, in no more than two installments on or before the end of the amnesty period.

Section 2904-F. Amnesty contingent on continued compliance.

Notwithstanding any other provision of this article, the department may assess and collect from a taxpayer all penalties

and interest waived through the tax amnesty program established in this article if, within two years after the end of the program, either of the following occurs:

(1) the taxpayer granted amnesty under this article becomes delinquent for three consecutive periods in payment of taxes due or filing of returns required on a semimonthly, monthly, quarterly or other basis and the taxpayer has not contested the tax liability through a timely valid administrative or judicial appeal; or

(2) the taxpayer granted amnesty under this article becomes delinquent and is eight or more months late in payment of taxes due or filing of returns on an annual basis and the taxpayer has not contested the liability through a timely valid administrative or judicial appeal.

Section 2905-F. Limitation of deficiency assessment.

If, subsequent to the amnesty period, the department issues a deficiency assessment with respect to a tax amnesty return, the department shall have the authority to impose penalties and to pursue a criminal action only with respect to the difference between the amount shown on that tax amnesty return and the current amount of tax.

Section 2906-F. Overpayment of tax.

Notwithstanding any other provisions of this article or any other act, if an overpayment of eligible tax is refunded or credited within 180 days after the tax amnesty return is filed or the eligible tax is paid, whichever is later, no interest shall be allowed on the overpayment.

Section 2907-F. Previously paid interest and penalties.

No refund or credit shall be allowed for any interest or penalty on eligible taxes paid to the department prior to the amnesty period.

Section 2908-F. Proceedings relating to tax amnesty return barred.

Participation in the program is conditioned upon the taxpayer's agreement that the right to protest or pursue an administrative or judicial proceeding with regard to tax amnesty returns filed under the program or to claim any refund of money paid under the program is barred.

Section 2909-F. Undisclosed liabilities.

Nothing in this article shall be construed to prohibit the department from instituting civil or criminal proceedings against any taxpayer with respect to any amount of tax that is not disclosed on the tax amnesty return or any amount disclosed on the amnesty return that is not paid.

Section 2910-F. Duties of department.

(a) Guidelines.--The department shall develop guidelines to implement the provisions of this article. The guidelines must be published in the Pennsylvania Bulletin within 60 days of the effective date of this article and shall contain, but not be limited to, the following information:

(1) An explanation of the program and the requirements for eligibility for the program.

(2) The dates during which a tax amnesty return may be filed.

(3) A specimen copy of the tax amnesty return.

(4) The amnesty revenue estimates required under section 2912-F(b).

(b) Publicity.--The department shall publicize the program to maximize public awareness of and participation in the program. The department shall coordinate to the highest degree possible its publicity efforts and other actions taken to implement this article.

(c) Reports.--The department shall issue reports to the General Assembly detailing program implementation. The reports shall contain the following information:

(1) Within 30 days after the end of the amnesty period:

(i) A detailed breakdown of the department's administrative costs in implementing the program.

(ii) The total dollar amount of revenue collected by the program.

(2) Within 180 days after the end of the amnesty period:

(i) The number of tax amnesty returns filed and a breakdown of the number and dollar amount of revenue raised for each tax by calendar year during which the tax period ended. In addition, the gross revenues shall be broken down in the following categories:

(A) Amounts represented by assessments receivable established by the department on or before the first day of the amnesty period.

(B) All other amounts.

(ii) The total dollar amount of penalties and interest waived under the program.

(iii) The demographic characteristics of tax amnesty participants, including North American Industry Classification System codes of participants, type of taxpayer, consisting of individual, partnership, corporation or other entity, size of tax liability and geographical location.

(d) Notification.--The department shall notify in writing all known tax delinquents at the taxpayers' last known address of the existence of the tax amnesty program. The sole purpose of the letter sent by the department to taxpayers must be notification of the program.

Section 2911-F. Method of payment.

All tax payments under the program shall be made by certified check, money order, electronic transfer, credit card, cash or its equivalent.

Section 2912-F. Use of revenue.

(a) Restricted revenue account.--Except as set forth in subsection (c), all revenue generated by this article shall be deposited into a restricted revenue account in the General Fund. Revenue from the restricted revenue account shall be distributed as follows:

(1) All money from General Fund sources shall be deposited in the General Fund no later than June 30, 2010, less repayment of any costs for administration of the program to the department.

(2) All revenue from Motor License Fund sources shall be deposited in the Motor License Fund no later than June 30, 2010.

(3) All revenue from Liquid Fuels Tax Fund sources shall be deposited in the Liquid Fuels Tax Fund no later than June 30, 2010.

(b) Revenue estimates.--

(1) The department shall submit, for publication in the Pennsylvania Bulletin, a separate amnesty revenue estimate for revenue generated by this article from the following sources:

(i) the General Fund;

(ii) the Motor License Fund;

(iii) the Liquid Fuels Tax Fund; and

(iv) the methodology used to develop the estimate.

(2) All amnesty revenue estimates shall be submitted for publication pursuant to section 2910-F(a)(4).

(c) Budget Stabilization Reserve Fund.--Revenue generated by this article in excess of 125% of the amnesty revenue estimates under subsection (b) (1) (i) and the cost of administration of this article shall be deposited into the Budget Stabilization Reserve Fund.

Section 2913-F. Additional penalty.

(a) Penalty.--Subject to the limitations provided under subsection (b), a penalty of 5% of the unpaid tax liability and penalties and interest shall be levied against a taxpayer subject to an eligible tax if the taxpayer had failed to remit an eligible tax due or had an unreported or underreported liability for an eligible tax on or after the first day following the end of the amnesty period.

(b) Nonapplicability.--The penalty provided in this section shall not apply to a taxpayer who:

(1) has paid the liability in full or entered into a duly approved and executed deferred payment plan on or before the last day of the amnesty period; or

(2) has filed a timely and valid administrative or judicial appeal contesting the liability on or before the last day of the amnesty period.

(c) Penalty in addition.--The penalty provided by this section shall be in addition to all other penalties provided by law.

Section 2914-F. Construction.

Except as expressly provided in this article, this article shall not:

(1) be construed to relieve any person, corporation or other entity from the filing of returns or from any taxes, penalties or interest imposed by the provisions of any laws;

(2) affect or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws; or

(3) prevent the commencement or further prosecution of any proceedings by the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of taxes, penalties or interest due to the Commonwealth under any such laws.

Section 2915-F. Suspension of inconsistent acts.

All acts or parts of acts inconsistent with the provisions of this article are suspended to the extent necessary to carry out the provisions of this article.

Section 11.1. The act is amended by adding sections to read:

Section 3003.20. Penalties for Certain Corporate Officers.--If an officer of a corporation or association intentionally fails to make reports to the Auditor General or to the Department of Revenue, or successively to the Auditor General and to the department, as required by law, for any two successive tax years, the officer 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). This fine shall be in addition to any fine or prison sentence under section 1704 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 3003.21. Further Examination of Books and Records.--(a) The Department of Revenue or any of its authorized agents is authorized to examine the books, papers and records of any taxpayer or other persons in order to verify the accuracy and completeness of a return or report or, if no return or report is made, to ascertain and assess any tax or other liability owed the Commonwealth.

(b) The department may determine, by desk, field or other audit, the amount of tax or other liability required to be paid to the Commonwealth. The department may determine the liability based upon the facts contained in the return or report being audited or upon other information in the department's possession. The department may determine the liability based upon a reasonable statistical sample or test audit performed in accordance with the regulations of the department if the individual being audited does not have complete records of transactions or if the review of each transaction or invoice would place an undue burden on the department to conduct an audit in a timely and efficient manner.

(c) The taxpayer may challenge the accuracy of a statistical sample or test audit by providing clear and convincing evidence that the method used for the statistical sample or test audit is erroneous, lacks a rational basis or produces a different result when the complete records are considered.

Section 12. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of Article XVII-F of the act.

(2) Article XX-B of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, is repealed.

Section 13. The addition of Article XVII-F of the act is a continuation of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949. Except as otherwise provided in Article XVII-F of the act, all activities initiated under Article XX-B of the Public School Code of 1949 shall continue and remain in full force and effect and may be completed under Article XVII-F of the act. Orders, regulations, rules and decisions which were made under Article XX-B of the Public School Code of 1949 and which are in effect on the effective date of section 12(2) of this act shall remain in full force and effect until revoked, vacated or modified under Article XVII-F of the act.

Section 13.1. The General Assembly finds and declares that the inclusion of "little cigars" in Article XII of the act is not intended to affect the Master Settlement Agreement and related documents entered into November 23, 1998, by the Commonwealth and leading United States tobacco product manufacturers approved by the Court of Common Pleas, Philadelphia County, January 13, 1999.

Section 14. This act shall apply as follows:

(1) The amendment of section 319 of the act shall apply to tax returns due after May 31, 2010.

(2) The amendment of the definition of "capital stock value" in section 601 of the act shall apply to taxable years beginning after December 31, 2009.

(3) For purposes of determining the amount of any underpayment under section 3003.3(d) of the act, the amendment of section 602(h) of the act shall not be taken into account for any payment of estimated capital stock or franchise tax due prior to January 1, 2010.

(4) The addition of section 1101(b.1) of the act shall apply to calendar years beginning after December 31, 2008, and to gross receipts received after September 30, 2009.

Section 15. This act shall take effect as follows:

(1) The amendment or addition of section 1101(b.1), (c), (c.1), (e) and (j) of the act shall take effect October 1, 2009.

(2) The following provisions shall take effect November 1, 2009:

- (i) The amendment of section 1201 of the act.
 - (ii) The amendment of section 1206 of the act.
 - (iii) The amendment of section 1206.1 of the act.
 - (iv) The amendment of section 1216 of the act.
 - (v) The amendment of section 1272 of the act.
 - (vi) The amendment of section 1273 of the act.
 - (vii) The amendment of section 1278 of the act.
- (3) The addition of sections 1210(b) and 1216.1 of the act shall take effect in 90 days.
- (4) The remainder of this act shall take effect immediately.

APPROVED--The 9th day of October, A.D. 2009.

EDWARD G. RENDELL