

COMMONWEALTH OF PENNSYLVANIA
Legislative Journal

WEDNESDAY, NOVEMBER 2, 2005

SESSION OF 2005 189TH OF THE GENERAL ASSEMBLY

No. 65

SENATE

WEDNESDAY, November 2, 2005

The Senate met at 11 a.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Catherine Baker Knoll) in the Chair.

PRAYER

The Chaplain, Reverend ELIZABETH GIVLER, of Colonial Park United Methodist Church, Harrisburg, offered the following prayer:

Let us pray.

Gracious God, we give You thanks for this day. We give You thanks for being with us. We give You thanks for our rich history we have here. We give You thanks for William Penn, who desired to establish a society that was Godly, virtuous, and exemplary for all of humanity, and we pray that You would empower this body here to help us do that. Help these leaders lead our Commonwealth to be a Godly, virtuous example for our nation, a Commonwealth that others would want to follow and see as a State that makes laws that make sense and are truly of the people, by the people, and for the people.

As this body comes together once again, we ask for Your guidance. Only You, the supreme ruler of the universe, creator of history, and the wisest ruler of all, know what is best. Give these leaders insight, wisdom, discernment, and patience as they consider the issues before them. Empower these leaders to faithfully fulfill their duties and hold one another accountable to the oaths that they have taken and to fulfill the tasks before them today and in the future.

Bless these Senators and their staffs as we lift this prayer in the name of the one who created us, redeemed us, and empowers us for all of the tasks and responsibilities before this body. May we truly remain one nation, under God, indivisible, with liberty and justice for all. In the name of our blessed Lord. Amen.

The PRESIDENT. The Chair thanks Reverend Givler, who is the guest today of Senator Piccola.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by those assembled.)

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Session of November 1, 2005.

The Clerk proceeded to read the Journal of the preceding Session, when, on motion of Senator BRIGHTBILL, and agreed to by voice vote, further reading was dispensed with and the Journal was approved.

COMMUNICATIONS FROM THE GOVERNOR

NOMINATION REFERRED TO COMMITTEE

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows and referred to the Committee on Rules and Executive Nominations:

**MEMBER OF THE PENNSYLVANIA
HUMAN RELATIONS COMMISSION**

November 2, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Daniel Woodall, 740 Sandy Street, Norristown 19401, Montgomery County, Seventeenth Senatorial District, for appointment as a member of the Pennsylvania Human Relations Commission, to serve for a term of five years or until his successor is appointed and qualified, vice Theotis Braddy, Camp Hill, whose term expired.

EDWARD G. RENDELL
Governor

**RECALL COMMUNICATION
LAID ON TABLE**

The PRESIDENT laid before the Senate the following communication in writing from His Excellency, the Governor of the Commonwealth, which was read as follows and laid on the table.

**MEMBER OF THE PENNSYLVANIA
HUMAN RELATIONS COMMISSION**

November 2, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In accordance with the power and authority vested in me as Governor of the Commonwealth, I do hereby recall my nomination dated June 23, 2005, for the appointment of Daniel Woodall, 740 Sandy Street, Norristown 19401, Montgomery County, Seventeenth Senatorial District, as a member of the Pennsylvania Human Relations Commission, to serve for a term of five years or until his successor is appointed and qualified, vice Theotis Braddy, Camp Hill, whose term expired.

I respectfully request the return to me of the official message of nomination on the premises.

EDWARD G. RENDELL
Governor

HOUSE MESSAGE

**HOUSE CONCURS IN SENATE AMENDMENTS
TO HOUSE BILL**

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate to **HB 816**.

BILL SIGNED

The PRESIDENT (Lieutenant Governor Catherine Baker Knoll) in the presence of the Senate signed the following bill:

HB 816.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator BRIGHTBILL.

Senator BRIGHTBILL. Madam President, I ask for a legislative leave for Senator Madigan.

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'PAKE.

Senator O'PAKE. Madam President, I request a legislative leave for Senator Stout.

The PRESIDENT. Senator BRIGHTBILL requests a legislative leave for Senator Madigan.

Senator O'PAKE requests a legislative leave for Senator Stout. Without objection, the leaves will be granted.

CALENDAR

SB 925 CALLED UP OUT OF ORDER

SB 925 (Pr. No. 1216) -- Without objection, the bill was called up out of order, from page 3 of the Third Consideration Calendar, by Senator BRIGHTBILL, as a Special Order of Business.

**BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE**

SB 925 (Pr. No. 1216) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of December 18, 1980 (P.L.1241, No.224), known as the Pennsylvania Cancer Control, Prevention and Research Act, further providing for sunset provisions.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator BRIGHTBILL.

Senator BRIGHTBILL. Madam President, at this time I ask for a brief recess of the Senate for the purpose of a meeting of the Committee on Rules and Executive Nominations, which will be held immediately in the Rules room. We expect that to take about 5 minutes. We will then return to the floor and vote Executive Nominations.

The PRESIDENT. Senator BRIGHTBILL requests a brief 5-minute recess for a meeting of the Committee on Rules and Executive Nominations. We will then return to the floor for Executive Nominations. Without objection, the Senate stands in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

**COMMUNICATION FROM THE GOVERNOR
TAKEN FROM THE TABLE**

Senator ROBBINS, from the Committee on Rules and Executive Nominations, called from the table a communication from His Excellency, the Governor of the Commonwealth, recalling the following nomination, which was read by the Clerk as follows:

**MEMBER OF THE PENNSYLVANIA
HUMAN RELATIONS COMMISSION**

June 23, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Daniel Woodall, 740 Sandy Street, Norristown 19401, Montgomery County, Seventeenth Senatorial District, for appointment as a member of the Pennsylvania Human Relations Commission, to serve for a term of five years or until his successor

is appointed and qualified, vice Theotis Braddy, Camp Hill, whose term expired.

EDWARD G. RENDELL
Governor

NOMINATION RETURNED TO THE GOVERNOR

Senator ROBBINS. Madam President, I move that the nomination just read by the Clerk be returned to His Excellency, the Governor.

A voice vote having been taken, the question was determined in the affirmative.

The PRESIDENT. The nomination will be returned to the Governor.

**REPORT FROM COMMITTEE ON
RULES AND EXECUTIVE NOMINATIONS**

Senator ROBBINS, from the Committee on Rules and Executive Nominations, reported the following nominations made by His Excellency, the Governor of the Commonwealth, which were read by the Clerk as follows:

**MEMBER OF THE STATE BOARD
OF LANDSCAPE ARCHITECTS**

October 6, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Edward J. Rak, (Public Member), 3222 Sundale Drive, Glenshaw 15116, Allegheny County, Fortieth Senatorial District, for reappointment as a member of the State Board of Landscape Architects, to serve for a term of three years and until his successor is appointed and qualified, but not longer than six months beyond that period.

EDWARD G. RENDELL
Governor

**BRIGADIER GENERAL, PENNSYLVANIA
AIR NATIONAL GUARD**

October 5, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Colonel Roy E. Uptegraff, III, 213 Meadow Ridge Court, McKees Rocks 15136, Allegheny County, Fortieth Senatorial District, for appointment as Brigadier General, LINE, with assignment as Commander, 171st Air Refueling Wing, Pennsylvania Air National Guard, to serve until terminated, vice Brigadier General William J. Boardley, who will be retiring.

EDWARD G. RENDELL
Governor

**MEMBER OF THE COUNCIL OF TRUSTEES OF
SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA
OF THE STATE SYSTEM OF HIGHER EDUCATION**

September 27, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Grace Hawkins, 419 Deerfield Drive, Cranberry Township 16066, Butler County, Fortieth Senatorial District, for appointment as a member of the Council of Trustees of Slippery Rock University of Pennsylvania of the State System of Higher Education, to serve until the third Tuesday of January 2011, and until her successor is appointed and qualified, vice Martha King, Valencia, whose term expired.

EDWARD G. RENDELL
Governor

NOMINATIONS LAID ON THE TABLE

Senator ROBBINS. Madam President, I request that the nominations just read by the Clerk be laid on the table.

The PRESIDENT. The nominations will be laid on the table.

EXECUTIVE NOMINATIONS

EXECUTIVE SESSION

Motion was made by Senator ROBBINS,
That the Senate do now resolve itself into Executive Session for the purpose of considering certain nominations made by the Governor.

Which was agreed to by voice vote.

NOMINATIONS TAKEN FROM THE TABLE

Senator ROBBINS. Madam President, I call from the table certain nominations and ask for their consideration.

The Clerk read the nominations as follows:

**MEMBER OF THE STATE BOARD
OF LANDSCAPE ARCHITECTS**

October 6, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Edward J. Rak, (Public Member), 3222 Sundale Drive, Glenshaw 15116, Allegheny County, Fortieth Senatorial District, for reappointment as a member of the State Board of Landscape Architects, to serve for a term of three years and until his successor is appointed and qualified, but not longer than six months beyond that period.

EDWARD G. RENDELL
Governor

**BRIGADIER GENERAL, PENNSYLVANIA
AIR NATIONAL GUARD**

October 5, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Colonel Roy E. Uptegraff, III, 213 Meadow Ridge Court, McKees Rocks 15136, Allegheny County, Forty-second Senatorial District, for appointment as Brigadier General, LINE, with assignment as Commander, 171st Air Refueling Wing, Pennsylvania Air National Guard, to serve until terminated, vice Brigadier General William J. Boardley, who will be retiring.

EDWARD G. RENDELL
Governor

**MEMBER OF THE COUNCIL OF TRUSTEES OF
SLIPPERY ROCK UNIVERSITY OF PENNSYLVANIA
OF THE STATE SYSTEM OF HIGHER EDUCATION**

September 27, 2005

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

In conformity with law, I have the honor hereby to nominate for the advice and consent of the Senate, Grace Hawkins, 419 Deerfield Drive, Cranberry Township 16066, Butler County, Fortieth Senatorial District, for appointment as a member of the Council of Trustees of Slippery Rock University of Pennsylvania of the State System of Higher Education, to serve until the third Tuesday of January 2011, and until her successor is appointed and qualified, vice Martha King, Valencia, whose term expired.

EDWARD G. RENDELL
Governor

On the question,
Will the Senate advise and consent to the nominations?

The yeas and nays were required by Senator ROBBINS and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.
Ordered, That the Governor be informed accordingly.

EXECUTIVE SESSION RISES

Senator ROBBINS. Madam President, I move that the Executive Session do now rise.

The motion was agreed to by voice vote.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I ask for a recess of the Senate for the purpose of a Republican caucus, which will begin immediately in the Majority Caucus Room.

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Madam President, I request a Democratic caucus.

The PRESIDENT. For purposes of Republican and Democratic caucuses, both to begin immediately, without objection, the Senate stands in recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

BILL REPORTED FROM COMMITTEE

Senator THOMPSON, from the Committee on Appropriations, reported the following bill:

HB 1539 (Pr. No. 3059) (Rereported)

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, providing for public official compensation; further providing for reports to the Secretary of Revenue; establishing and providing for appropriation to the Emergency Energy Assistance Fund; and making a repeal related to public official compensation.

CONSIDERATION OF CALENDAR RESUMED

THIRD CONSIDERATION CALENDAR

**BILL REREPORTED FROM COMMITTEE AS
AMENDED OVER IN ORDER**

HB 111 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

**BILL REREPORTED FROM COMMITTEE AS
AMENDED OVER IN ORDER TEMPORARILY**

HB 515 -- Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

**BILL REREPORTED FROM COMMITTEE AS
AMENDED, AMENDED**

SB 862 (Pr. No. 1302) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, further providing for definitions and for the Pennsylvania Gaming Control Board; providing for applicability of other statutes; further providing for powers and duties of board; providing for code of conduct; further providing for licensed entity application appeals from board, for license or permit application hearing process, for board minutes and records, for collection of fees and fines, for order of initial license issuance, for slot machine license application and for slot machine license application business entity requirements; providing for licensing of principals, for licensing of key employees, for recusal and disqualification of members, for alternate members, for initial applications and for code of conduct; and further providing for occupation permit application, for gross terminal revenue deductions, for public official financial interests, for political influence and for enforcement.

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

Senator ARMSTRONG offered the following amendment No. A4007:

Amend Title, page 1, line 16, by inserting after "deductions,": for transfers from the State Gaming Fund,

Amend Sec. 8, page 43, line 10, by inserting after "1402": , 1408

Amend Sec. 8, page 44, by inserting between lines 25 and 26:

§ 1408. Transfers from State Gaming Fund.

(a) Transfer for compulsive problem gambling treatment.—Each year, the sum of \$1,500,000 or an amount equal to .001 multiplied by the total gross terminal revenue of all active and operating licensed gaming entities, whichever is greater, shall be transferred into the Compulsive Problem Gambling Treatment Fund established in section 1509 (relating to compulsive and problem gambling program).

(b) Transfer for Volunteer Fire Company Grant Program.—Annually, the sum of \$25,000,000 shall be transferred from the State Gaming Fund to the Volunteer Fire Company Grant Program established under the act of July 31, 2003 (P.L.73, No.17), known as the Volunteer Fire Company and Volunteer Ambulance Service Grant Act.

(c) Local law enforcement grants.—Annually, the sum of \$5,000,000 shall be transferred to the board for the purpose of issuing grants to local law enforcement agencies to enforce and prevent the unlawful operation of slot machines in this Commonwealth.

(c.1) Transfer for victims of domestic violence.—Each year the sum of \$3,500,000 shall be transferred from the fund to the Department of Public Welfare to be used for domestic violence programs.

(d) Annual transfers.—Annually, the following sums shall be transferred from the State Gaming Fund as follows:

(1) To each county, 80¢ per acre for each acre of land in the county for which a payment is made under the act of May 17, 1929 (P.L.1798, No.591), referred to as the Forest Reserves Municipal Financial Relief Law, or under 34 Pa.C.S. § 708 (relating to payments in lieu of taxes).

(2) To each school district, 80¢ per acre for each acre of land in the school district for which a payment is made under the Forest Reserves Municipal Financial Relief Law or under 34 Pa.C.S. § 708.

(3) To each township, 80¢ per acre for each acre of land in the township for which a payment is made under the Forest Reserves Municipal Financial Relief Law or under 34 Pa.C.S. § 708.

(e) Transfer to Property Tax Relief Fund.—Monthly, the State Treasurer shall transfer the remaining balance in the State Gaming Fund which is not allocated in subsections (a), (b), (c), (c.1) and (d) to the Property Tax Relief Fund established in section 1409 (relating to Property Tax Relief Fund).

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

The PRESIDENT. The Chair recognizes the gentleman from Lancaster, Senator Armstrong.

Senator ARMSTRONG. Madam President, my amendment earmarks \$3.5 million for victims of domestic violence. There is

definitely a correlation between gambling and domestic violence, and all this does is earmarks \$3.5 million every year to the Department of Public Welfare for this cause, and I request a positive vote.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, while I do not necessarily agree with the correlation, I agree with the amendment.

And the question recurring,
Will the Senate agree to the amendment?
It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER TEMPORARILY

SB 940 -- Without objection, the bill was passed over in its order temporarily at the request of Senator BRIGHTBILL.

BILLS OVER IN ORDER TEMPORARILY

SB 384 and **HB 603** -- Without objection, the bills were passed over in their order temporarily at the request of Senator BRIGHTBILL.

BILLS OVER IN ORDER

SB 629 and **SB 775** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 929 (Pr. No. 1218) -- The Senate proceeded to consideration of the bill, entitled:

An Act prohibiting the advertising and conducting of certain live musical performances or productions; providing for enforcement; and imposing a penalty.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo

Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILL OVER IN ORDER

HB 1049 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILLS ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 1361 (Pr. No. 1636) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 16, 2002 (P.L.315, No.46), known as the Community Services Block Grant Act, further providing for the expiration of the act.

Considered the third time and agreed to,

On the question, Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

HB 1606 (Pr. No. 2949) -- The Senate proceeded to consideration of the bill, entitled:

An Act establishing a program for breast and cervical cancer screening services for certain eligible women; and providing for the powers and duties of the Department of Health.

Considered the third time and agreed to, And the amendments made thereto having been printed as required by the Constitution,

On the question, Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

HB 1743 (Pr. No. 2944) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, further providing for assessment limits on counties of the second class; and providing for effect of appeal, escrow and payment under protest.

Considered the third time and agreed to, And the amendments made thereto having been printed as required by the Constitution,

On the question, Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh

Conti	Kitchen	Rafferty	Wenger
Cornan	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earl	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

SECOND CONSIDERATION CALENDAR

BILLS OVER IN ORDER

HB 87 and **HB 172** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION

SB 178 (Pr. No. 1237) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, further providing for powers and duties of the Office of Victims' Services, for Victims' Services Advisory Committee membership and for powers and duties of committee.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

BILLS OVER IN ORDER

SB 243 and **SB 437** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILLS REREFERRED

SB 486 (Pr. No. 520) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for grants to public schools to purchase advanced emergency alerting devices; and making an appropriation.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

SB 656 (Pr. No. 1147) -- The Senate proceeded to consideration of the bill, entitled:

An Act providing for dispute resolution' procedures relating to residential construction defects between contractors and homeowners or members of associations.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

BILLS OVER IN ORDER

SB 660, SB 676 and **SB 736** -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL REREFERRED

SB 868 (Pr. No. 1304) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of May 17, 1929 (P.L.1798, No.591), referred to as the Forest Reserves Municipal Financial Relief Law, increasing distribution of annual charge; and making editorial changes.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

BILL ON SECOND CONSIDERATION
AND REREFERRED

SB 881 (Pr. No. 1180) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 26 (Eminent Domain) of the Pennsylvania Consolidated Statutes, providing for limitations on the use of eminent domain; and making a related repeal.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

SB 895 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION
AND REREFERRED

SB 897 (Pr. No. 1187) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 26 (Eminent Domain), 42 (Judiciary and Judicial Procedure) and 51 (Military Affairs) of the Pennsylvania Consolidated Statutes, adding provisions relating to eminent domain; and making related repeals.

Considered the second time and agreed to,

Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was rereferred to the Committee on Appropriations.

BILL REREFERRED

SB 995 (Pr. No. 1305) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for registration of snowmobile or ATV.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill was rereferred to the Committee on Appropriations.

BILL OVER IN ORDER

HB 1114 -- Without objection, the bill was passed over in its order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION AND RECOMMITTED

HB 1318 (Pr. No. 3022) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, providing for requirements relating to voter identification; further providing for powers and duties of county boards, for public buildings to be used where possible and portable polling places and for prohibiting polling places in buildings where malt or brewed beverages or liquors are sold; providing for polling places in other buildings; further providing for affidavits of candidates; providing for restrictions on voting by convicted felons; and further providing for voting procedures, for manner of applying to vote, for date of application for absentee ballots, for canvassing of official absentee ballots and for violation of provisions relating to absentee voting.

Considered the second time and agreed to,
Ordered, To be printed for third consideration.

Upon motion of Senator BRIGHTBILL, and agreed to by voice vote, the bill just considered was recommitted to the Committee on State Government.

BILLS OVER IN ORDER

HB 1400, HB 1509 and HB 1690 -- Without objection, the bills were passed over in their order at the request of Senator BRIGHTBILL.

BILL ON SECOND CONSIDERATION

HB 1967 (Pr. No. 3023) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of November 20, 2004 (P.L.886, No.121), entitled "An act authorizing and directing the Department of General Services, with the approval of the Governor, to grant and convey to

Erie-Western Pennsylvania Port Authority and to Robert L. and Karen N. Doult, Leona B. Disbrow, Louise F. Waller, Mary Schabacker, Paul D. and Mary Ann Brugger, and Ralph and Janet Toland, Sr., certain lands situate in the City of Erie, County of Erie; authorizing the Department of General Services, with the approval of the Governor, to grant and convey to Derry Township Municipal Authority a certain easement for sanitary sewer purposes, together with an existing sanitary sewer line and appurtenances, situate in Derry Township, Dauphin County; authorizing and directing the Department of General Services, with the approval of the Governor, to grant and convey to Summerdale Associates, L.P., certain lands situate in the Township of East Pennsboro, County of Cumberland; and authorizing and directing the Department of General Services, with the approval of the Department of Military and Veterans Affairs and the Governor, to grant and convey to the Borough of Doylestown certain lands situate in the Borough of Doylestown, Bucks County," further providing for conveyance to the Borough of Doylestown, Bucks County.

Considered the second time and agreed to,

Ordered, To be printed on the Calendar for third consideration.

SENATE RESOLUTION No. 169, ADOPTED

Senator BRIGHTBILL, without objection, called up from page 8 of the Calendar, **Senate Resolution No. 169**, entitled:

A Resolution urging the Congress of the United States to take appropriate action to address the hydrogen shortage in the United States due to factory shutdowns caused by the devastation of Hurricane Katrina.

On the question,
Will the Senate adopt the resolution?

A voice vote having been taken, the question was determined in the affirmative.

HOUSE CONCURRENT RESOLUTION No. 354, ADOPTED

Senator BRIGHTBILL, without objection, called up from page 8 of the Calendar, **House Concurrent Resolution No. 354**, entitled:

A Concurrent Resolution designating the Garden of Reflection in Lower Makefield Township, Bucks County, as an Official State Memorial to the Victims of the September 11, 2001, terrorist attacks.

On the question,
Will the Senate concur in the resolution?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in House Concurrent Resolution No. 354.

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

A voice vote having been taken, the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 2**

BILL AMENDED

HB 1539 (Pr. No. 2408) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, further providing for reports to the Secretary of Revenue; and establishing and providing for appropriation to the Emergency Energy Assistance Fund.

On the question,

Will the Senate agree to the bill on third consideration?

Senator LOGAN offered the following amendment No. A4019:

Amend Title, page 1, line 30, by inserting after "Commonwealth,"": providing for public official compensation;

Amend Title, page 1, line 31, by striking out "AND" where it appears the first time

Amend Title, page 1, line 32, by removing the period after "FUND" and inserting: ; and making a repeal related to public official compensation.

Amend Bill, page 2, lines 3 through 6, by striking out all of said lines and inserting:

Section 1. The act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is amended by adding a section to read:

Section 311. Public Official Compensation Limitations.—(a) This section shall apply to:

(1) Members, legislative officers and leaders of the General Assembly.

(2) Justices and judges of the courts of this Commonwealth.

(3) The Governor, Lieutenant Governor and cabinet members.

(4) The State Treasurer.

(5) The Auditor General.

(6) The Attorney General.

(b) Except as provided in this section, for officials listed in subsection (a), the State Treasurer shall pay salaries, mileage and expenses in accordance with requirements in effect on July 1, 2005.

(c) On December 1, 2006, and each December 1 thereafter, the salaries paid to officials listed in subsection (a) shall be increased by the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent twelve-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics.

(d) The annual salaries as determined by the State Treasurer under this section shall be published in the Pennsylvania Bulletin by December 1, 2006, and by each December 1 thereafter.

(e) The State Treasurer shall pay individuals designated as Deputy Whips in the Senate the same salary as Policy Chairmen of the Senate.

(f) The President pro tempore of the Senate shall be elected by the members of the Senate.

(g) The following officers of the Senate shall be elected by the appropriate caucus:

(1) Majority Leader.

(2) Minority Leader.

(3) Majority Whip.

(4) Minority Whip.

(5) Majority Caucus Chairman.

(6) Minority Caucus Chairman.

(7) Appropriations Chairman.

(8) Minority Appropriations Chairman.

(9) Majority Caucus Secretary.

(10) Minority Caucus Secretary.

(11) Minority Policy Chairman.

(h) The following officers of the Senate shall be appointed by the

President pro tempore of the Senate:

(1) Majority Policy Chairman.

(2) Majority Caucus Administrator.

(3) Majority Deputy Whip.

(i) The following officers of the Senate shall be appointed by the Minority Leader of the Senate:

(1) Minority Caucus Administrator.

(2) Minority Deputy Whip.

(j) The Speaker of the House of Representatives shall be elected by the members of the House of Representatives.

(k) The following officers of the House of Representatives shall be elected by the appropriate caucus:

(1) Majority Leader.

(2) Minority Leader.

(3) Majority Whip.

(4) Minority Whip.

(5) Majority Caucus Chairman.

(6) Minority Caucus Chairman.

(7) Appropriations Chairman.

(8) Minority Appropriations chairman.

(9) Majority Caucus Secretary.

(10) Minority Caucus Secretary.

(11) Majority Policy Chairman.

(12) Minority Policy Chairman.

(13) Majority Caucus Administrator.

(14) Minority Caucus Administrator.

Section 2. Section 901 of the act, amended December 2, 1976 (P.L.1274, No.283) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Amend Sec. 2, page 2, line 20, by striking out "2" and inserting: 3

Amend Bill, page 3, by inserting between lines 13 and 14:

Section 4. The act of July 7, 2005 (P.L.201, No.44), entitled "An act amending Titles 42 (Judiciary and Judicial Procedure), 46 (Legislation) and 71 (State Government) of the Pennsylvania Consolidated Statutes, providing for compensation; and making an inconsistent repeal," is repealed.

Amend Sec. 3, page 3, line 14, by striking out all of said line and inserting:

Section 5. This act shall take effect as follows:

(1) The amendment or addition of section 311 of the act shall take effect on December 1, 2005.

(2) Section 4 shall take effect on December 1, 2005.

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

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Logan.

Senator LOGAN. Madam President--

Senator BRIGHTBILL. Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, may we stand at ease?

The PRESIDENT. The Senate will stand at ease.

(The Senate was at ease.)

Senator BRIGHTBILL. Madam President.

Senator LOGAN. Madam President, can I continue?

The PRESIDENT. Senator Logan wants to address amendment A4019.

REQUEST FOR RECESS

Senator BRIGHTBILL. Madam President, I move for a recess of the Senate for a Republican caucus to begin immediately. We will return to the floor at 4 p.m.

Senator LOGAN. Madam President, can we be at ease for a minute?

The PRESIDENT. The Senate will be at ease.
(The Senate was at ease.)

The PRESIDENT. Senate Logan, you have the floor, so I am not permitted to interrupt you.

Senator LOGAN. Well, I believe we are at ease, Madam President, and our leadership is conferring with the Republican leadership, so I am fine if we are just at ease for a few minutes.

The PRESIDENT. Thank you, so we will remain at ease for a few more moments.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, we understand that the recess is just for a Republican caucus, and we will be back at 4 p.m. We have no objection to that, and we hope to conclude our business today in a reasonable, responsible, and collegial fashion, so we will agree to a recess.

The PRESIDENT. We will return in a half hour after a caucus with the understanding that Senator Logan can address us on amendment A4019. So without objection, there will be a half-hour recess.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

And the question recurring,
Will the Senate agree to the amendment A4019 to House Bill No. 1539?

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, the amendment is agreed to.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Logan.

Senator LOGAN. Madam President, I would like to take just a minute to explain the amendment. Over the past few days I understood that there were some intentions in this Chamber to take action on the July 7 pay raise. What I understood the action to be was to repeal the unvouchered expense portion of the pay raise. Madam President, with all due respect to the Members, I voted "no" on the July 7 pay raise. I have heard the cries from constituents in my district and constituents in southwestern Pennsylvania, and frankly, the State of Pennsylvania as a whole. When I looked at that provision of repealing just the unvouchered expense, a portion of the pay raise, I really believed that it just did not go far enough. This amendment is very simple, it repeals the pay raise for all involved - the Governor, the Lieutenant Governor, all the Members of the General Assembly, the Justices and the judges in the court system of the Commonwealth of Pennsylvania, the State Treasurer, the Auditor General, and the Attorney General.

Also, Madam President, I would like to thank my Members for their support on this amendment, and the Republicans across

the aisle and the leaders in the Republican Caucus.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, I know that there are many here who may wish that I not take to the podium and speak here today, but I think it is important that we spend a few minutes. I know it is late in the day and folks want to get back to their respective districts.

POINT OF ORDER

Senator BRIGHTBILL. Madam President, point of order.

The PRESIDENT. The gentleman will state his point.

Senator BRIGHTBILL. Madam President, I do not think there is anything before the body right now. We have accepted the amendment. I think what would be appropriate right now is if anyone else has an amendment to offer, that would be appropriate. I think the gentleman's remarks are in order when it comes time to pass the bill. We will reprint the bill and pass the bill tonight. We will print the bill as amended, and it is strictly a technical point, but we do have other things on the Calendar, such as the gaming bill, that sort of thing.

I respectfully ask the gentleman to reserve his remarks until they are appropriate, which is on final passage of the bill.

Senator FERLO. No problem, Madam President. Thank you.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

CONSIDERATION OF CALENDAR RESUMED

THIRD CONSIDERATION CALENDAR RESUMED

SB 940 CALLED UP

SB 940 (Pr. No. 1303) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 2 of the Third Consideration Calendar, by Senator BRIGHTBILL.

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 940 (Pr. No. 1303) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, further providing for the Agricultural Conservation Easement Purchase Fund; providing for the Land Trust Reimbursement Program, for proceeds from sales by the Department of Agriculture and for grants for agricultural land conservation assistance; and making a related repeal.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from York, Senator Waugh.

Senator WAUGH. Madam President, Senate Bill No. 940, a proposal to amend the Agricultural Area Security Law, would permanently establish two programs that we currently have in place, the Land Trust Reimbursement Program and the Agricultural Land Conservation Assistance Grant Program, both currently within the Department of Agriculture, Bureau of Farmland Preservation.

First of all, the Land Trust Reimbursement Program, as many of you know, was initiated as a pilot program in 1999. It authorized the State Farmland Preservation Board to reimburse qualified land trusts up to \$5,000 for expenses that were incurred in the administration of securing these properties for the trusts. It has really been a very successful program over the years, and a little over 7,300 acres of Pennsylvania farmland that have been preserved by these programs have cost the Commonwealth taxpayer about \$62 per acre, compared to the \$2,100 per acre cost for farmland that has been preserved under the Farmland Preservation Program. So as you can see, it is a very economically sound investment of State dollars, and really is a win-win for both the State and the land trusts, including our agricultural landowners across the State.

What this legislation would do, and I might add at no new cost to taxpayers, is provide an annual allocation of up to \$200,000 from the Agriculture Conservation Easement Purchase Fund that would be utilized to offset the costs to the land trusts through the reimbursement program. Now, many of you may be aware that Senator Wenger and I initiated a Farmer's First Agenda this past spring. It was a way to highlight some ideas on how we could help agriculturalists across the State, help them remain profitable, help them preserve land and be successful in agribusiness. We held hearings throughout the summer to take testimony on several bills and on several conceptual proposals that had an effect on agriculture in Pennsylvania, so we invited thoughts and listened to the concerns of interested parties. This issue, the permanent establishment of funding for the Land Trust Reimbursement Program, was brought to our attention by both the land trust individuals, this is important because it may be a question, and by members of the numerous county farmland preservation boards. They support it as a need, and both groups and the Department of Agriculture strongly agreed that it should be put in place, so that part of the bill, hopefully, goes without question.

Secondly, the Agricultural Land Conservation Assistance Grant Program, which was developed in 1982, and as I am sure most of the Senators know, was set up to make up a matching grant program to help assist our farmland preservation county boards with administrative programmatic investments, things such as global mapping systems and agriculture zoning ordinances at the local level. It also could be used for contract services and software to help administer the programs at the county level. This has been an extremely successful program, and funding for this program came through occasional sales of State-owned farmland. It is something that occurs from time to time as land is moved through the process of Commonwealth ownership.

Today we have had at least five rounds of applications, and four counties have actually reached what was identified previ-

ously as a \$25,000 lifetime maximum. What this bill would propose is to establish this program permanently, to remove the \$25,000 lifetime limit, and establish an annual cap of \$10,000 for each and every one of the counties that has farmland preservation. The program would also permit in-kind and like-kind contributions toward matching funds, county applications. Of the original \$750,000 that we allocated to this program, there is only \$358,000 left, so this would help to infuse a little more funding into it. Again, both of these programs, which would be permanently set in statute by this legislation, represent an opportunity for the Commonwealth to levy local and private dollars to increase the number of acres we preserve here in Pennsylvania in our Farmland Preservation Program.

In conclusion, I appreciate the support I have received on this legislation from all of my colleagues here in the Senate in developing it, and I encourage everyone to support it.

Thank you very much.

The PRESIDENT. Thank you, Senator Waugh, for all your comments on the Agricultural Area Security Law providing for an agricultural conservation easement program.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR No. 1

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 862 (Pr. No. 1319) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 4 (Amusements) of the Pennsylvania Consolidated Statutes, further providing for definitions and for the Pennsylvania Gaming Control Board; providing for applicability of other statutes; further providing for powers and duties of board; providing for code of conduct; further providing for licensed entity application ap-

peals from board, for license or permit application hearing process, for board minutes and records, for collection of fees and fines, for order of initial license issuance, for slot machine license application and for slot machine license application business entity requirements; providing for licensing of principals, for licensing of key employees, for recusal and disqualification of members, for alternate members, for initial applications and for code of conduct; and further providing for occupation permit application, for gross terminal revenue deductions, for transfers from the State Gaming Fund, for public official financial interests, for political influence and for enforcement.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, Senate Bill No. 862 represents a bipartisan effort to attempt to put in effect a better code of conduct at the gaming board. I would like to thank Senator Jubelirer and his staff for their assistance with us. The Senator and I sent a very strong letter to the board on their comment period on the code of conduct. Quite frankly, we did not envision them not doing what we thought they were going to do. This bill goes a long way in trying to remedy some of the things that are there. I hope this passes unanimously tonight. I think it will, and we hope that the House will see fit to pass it on to the Governor.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Madam President, I would like to echo Senator Fumo's remarks. I think it bodes well for the Senate that one of the strongest proponents of the original gambling legislation and one of the strongest opponents of this legislation were able to work together with their staffs to try to make this legislation better.

I want to commend Senator Fumo's staff, particularly Christopher Craig, and Drew Crompton of my staff, who worked very hard together to, I think, put together a significant piece of reform. As I indicated before, as much as I opposed this legislation and continue to do so, it is part of reality, and if we have it, we want to make it the best we possibly can, and I think this legislation goes a long way toward doing that. Is there more to be done? I think there is, but at least at this point we have come to an agreement, and I think it is a bill that every Member of the Senate can support.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Bucks, Senator Tomlinson.

Senator TOMLINSON. Madam President, I rise to congratulate Senator Pippy, but we need to thank some staff people, Christopher Craig, Fran Cleaver, and Kathy Eakin for the hard work that they have done. Senator Fumo and I worked hard on this before, and I think we did a good job on this. It is different than when I stood here before and talked about gaming. I had some people who were not on our side to help us draft it this time. I think the collaborative effort we have had between the

Caucus leaders is wonderful, and I think we have a wonderful product here. It has cleaned up some legislation that we intended to be good, and now we have made it even better.

So now I want to thank the leaders on both sides of the aisle for their cooperation in making this a much better bill.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Pippy.

Senator PIPPY. Madam President, I would like to also echo the comments of my colleagues. What you see in this legislation is a true compromise, and it is an issue where we found common ground on what we would like to call cleaning up and tightening up the gaming legislation, so I want to commend my colleagues in the Democratic Party as well as the Republican Party, and I thank them for their votes.

Thank you, Madam President.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earl	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferl	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

CONSIDERATION OF CALENDAR RESUMED

HB 515 CALLED UP

HB 515 (Pr. No. 3036) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 1 of the Third Consideration Calendar, by Senator BRIGHTBILL.

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

HB 515 (Pr. No. 3036) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing, in sales and use tax, for the definition of "manufacture"; and further providing, in personal income tax, for imposition and, in corporate net income, for definitions and imposition.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

RECONSIDERATION OF VOTE ON HB515

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, I move to reconsider the vote by which House Bill No. 515 was agreed to on third consideration.

On the question,

Will the Senate agree to the motion?

A voice vote having been taken, the question was determined in the affirmative.

And the question recurring,

Will the Senate agree to the bill on third consideration?

Senator FUMO offered the following amendment No. A3982:

Amend Title, page 1, lines 11 through 15, by all of said lines and inserting: definition of "manufacture," for assessment and for reassessment; deleting provisions relating to review by Board of Finance and Revenue; further providing for refund of sales tax attributed to bad debt; deleting provisions relating to refund or credit for overpayment and to restriction on refunds; further providing, in sales and use tax, for refunds, for refund petition and for extended time for filing special petition for refund; further providing, in personal income tax, for assessment, for jeopardy assessments, for procedure for reassessment, for restrictions on refunds and for limitations on refund or credit; further providing, in corporate net income tax, for definitions, for imposition, for reports and payment, for consolidated reports and for changes by Federal Government; providing, in corporate net income tax, for assessments, for jeopardy assessments, for limitations on assessments and for extension of limitation period; further providing for enforcement relating to corporate net income tax; providing, in corporate net income tax, for collection and for actions to collect and defenses; further providing, in gross receipts tax, for imposition; further providing, in realty transfer tax, for assessment, for lien and for refunds; further providing for mutual thrift institutions tax assessment; further providing, in malt beverage tax, for assessment and for refund of tax; further providing for inheritance tax refund; providing for petition procedure and administration; establishing the Tax Review Tribunal and providing for its powers and duties; deleting provisions relating to petitions for refunds; further providing for estimated tax and for underpayment of estimated tax, for refund petitions and for timely filing; providing for assessments by the Department of Revenue; and making related repeals.

Amend Bill, page 5, lines 22 through 30; pages 6 through 10, lines 1 through 30; page 11, lines 1 through 10, by striking out all of said lines on said pages and inserting:

Section 1.1. Sections 230, 232 and 234 of the act are amended to read:

Section 230. Assessment.—The department is authorized and required to make the inquiries, determinations and assessments of the tax (including interest, additions and penalties) imposed by this article. A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.

Section 232. Reassessment.—Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant

to Article XXVII. [Notice of an intention to file such a petition shall be given to the department within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety days of the date the notice of assessment was mailed. The department by registered mail shall supply the taxpayer with a statement setting forth in reasonable detail the basis of the assessment within thirty days after receipt of the taxpayer's notice of intention to file a petition for reassessment. A petition for reassessment shall thereafter be filed within thirty days after such basis of assessment has been mailed to the taxpayer. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained therein are true and correct and that the petition is not interposed for delay. An extension of time for filing the petition may be allowed for cause but in no case shall such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly filed such petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

It shall be the duty of the department, within six months after receiving a filed petition for reassessment, to dispose of the issue raised by such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.]

[Section 234. Review by Board of Finance and Revenue.—Within sixty days after the date of mailing of notice by the department of the decision on any petition for reassessment filed with it, the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such decision. The failure of the department to notify the petitioner of a decision within the time provided for by section 232 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action to the department and to the petitioner.]

Section 2. Section 247.1(a) of the act, amended June 22, 2001 (P.L.353, No.23), is amended to read:

Section 247.1. Refund of Sales Tax Attributed to Bad Debt.—(a) A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.
(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166).

The petition shall be filed with the department within the time limitations prescribed by section [3003.1 of this act.] 2703 of this act and shall be governed by the procedure of Article XXVII.

Section 3. Sections 250 and 251 of the act are amended to read:

[Section 250. Refund or Credit for Overpayment.—With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this act on the part of the person who made the overpayment, and shall refund any balance

to such person.

Section 251. Restriction on Refunds.—No refund shall be made under section 250 without the approval of the Board of Finance and Revenue.]

Section 4. Section 252 of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

Section 252. Refunds.—The department shall, pursuant to the provisions of [sections 253 and 254] Article XXVII, refund all taxes, interest and penalties paid to the Commonwealth under the provisions of this article and to which the Commonwealth is not rightfully entitled. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section [232 of this article] 2702 of Article XXVII to the extent that said petition has been determined adversely to the taxpayer by a decision which is no longer subject to further review or appeal: Provided further, That nothing contained herein shall be deemed to prohibit a taxpayer who has filed a timely petition for reassessment from amending it to a petition for refund where the petitioner has paid the tax assessed.

Section 5. Section 253 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 253. Refund Petition.—(a) Except as provided for in section 256 and in subsection (b) [and (d)] of this section, the refund or credit of tax, interest or penalty provided for by section 252 shall be made only where the person who has actually paid the tax files a petition for refund with the department under [section 3003.1. Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.] Article XXVII.

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 231, shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department under [section 3003.1(d)] Article XXVII. The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this article subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed under section 3003.1. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.]

Section 6. Section 254 of the act, amended June 30, 1995 (P.L.139, No.21), is amended to read:

[Section 254. Review by Board of Finance and Revenue.—Within ninety days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 253, the petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to

notify the petitioner of its decision within the time provided for by section 253 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The board shall give notice of its action to the department and to the petitioner.]

Section 7. Section 256 of the act is amended to read:

Section 256. Extended Time for Filing Special Petition for Refund.—Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to [file a regular petition within three years of the payment.] timely file a petition pursuant to section 2703 of Article XXVII. The provisions of [sections 253, 254 and 255] Article XXVII shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this provision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax (without consideration of interest and penalties) paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction and, as such, this section shall be construed as extending right beyond that provided for by section [253] 2703, and not to limit such other section.

Section 8. Sections 338, 339 and 340 of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 338. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) In the event that any taxpayer fails to file a return required by this article, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within ninety days after a notice of such estimated assessment has been mailed to the taxpayer, unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by [section 340 of this article.] Article XXVII.

(d) A notice of assessment issued by the department pursuant to this article shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment.

Section 339. Jeopardy Assessments.—(a) Jeopardy Assessments, Filing and Notice. If the department believes that the assessment or the collection of a deficiency will be jeopardized in whole or in part by delay, it may mail or issue notice of its finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy including interest and penalties and additions thereto, if any.

(b) Closing of Taxable Year. If the department believes that a taxpayer designs quickly to depart from the State or to remove his property therefrom or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual

proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the department shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(c) Jeopardy Assessments, Collection. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within ten days after the date of the notice of jeopardy assessment, a petition for reassessment, notwithstanding the provisions of section [340] 2702 to the contrary, accompanied by a bond or other security in such amounts as the department may deem necessary, not exceeding double the amount (including interest and penalties and additions thereto) as to which the stay is desired.

(d) Jeopardy Assessment, When Final. If a petition for reassessment, accompanied by bond or other security is not filed within the ten-day period, the assessment becomes final.

(e) Jeopardy Assessments, Hearing. If the taxpayer has so requested in his petition, the department shall grant him or his authorized representative an oral hearing.

(f) Jeopardy Assessments, Action on Petition for Reassessment. The department shall consider the petition for reassessment and notify the taxpayer of its decision thereon. Its decision as to the validity of the jeopardy assessment shall be final, unless the taxpayer within ninety days after notification of the department's decision files a petition for review authorized under section [341] 2705.

(g) Jeopardy Assessments, Presumptive Evidence of Jeopardy. In any proceeding brought to enforce payment of taxes made due and payable by this section, the belief of the department under subsection (a) whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the department of the mailing or issuing of the notices specified in this section is presumptive evidence that the notices were mailed or issued.

Section 340. Procedure for Reassessment.—[Promptly after the date of an assessment by the department, the department shall send by mail a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.] Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

Section 9. Section 341 of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

[Section 341. Review by Board of Finance and Revenue.—Within ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review such action. The failure of the department to notify the petitioner of a decision within the six-months period provided for by section 340 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-months period prescribed by section 340. Every petition for review filed hereunder shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the pur-

pose of delay and that the facts therein set forth are true. The Board of Finance and Revenue shall act in disposition of such petitions filed with it within six months after they have been received, and in the event of failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.]

Section 10. Section 347 of the act, amended July 1, 1985 (P.L.78, No.29), is amended to read:

Section 347. Restrictions on Refunds.—[No] A credit or refund [shall] may be made under section 346 [without the approval of the Board of Finance and Revenue, except such credits or refunds as arise]:

(1) By reason of the overpayment of an installment of estimated tax;

(2) Upon reassessment [or upon];

(3) Upon the filing of a final return or amended final return showing any overpayment of tax.

Section 11. Section 350 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 350. Limitations on Refund or Credit.—Any application for refund must be filed with the department under section [3003.1] 2703.

Section 12. Section 401(3)(a) and (b), 2(a) and 4(c) and (5) of the act, amended or added December 23, 1983 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353, No.23) and June 29, 2002 (P.L.559, No.89) are amended, clause (3)2 is amended by adding a phrase and the section is amended by adding clauses 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." 1. (a) In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, taxable income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government or that is not required to file a return with the Federal Government, the taxable income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government. For tax years beginning on or after January 1, 1991, additional deductions shall only be allowed for amounts included, under section 78 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned to and ascertained by the Federal Government and for the amount of any dividends received from a foreign corporation included in taxable income to the extent such dividends would be deductible in arriving at Federal taxable income if received from a domestic corporation. For taxable years beginning on or after January 1, 2008, if not otherwise allowed as a deduction, an additional deduction is allowed for all dividends paid by one to another of the included corporations of a unitary business to the extent those dividends are included in business income of a corporation that is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause (2).

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.

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

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

(B) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

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

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

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

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

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

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

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

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

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

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

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

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

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

(C) Gains and losses from sales or other disposition of intangible

personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

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

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

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

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in [subparagraph (B)] subparagraphs (B) and (C), 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.

(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.

(C) For taxable years that begin on or after January 1, 2008, all business income shall be apportioned to this State by a fraction, which is the sales factor. This includes any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income pursuant to paragraph (1) of phrase (e) of this subclause.

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

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

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

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

(14) Compensation is paid in this State if:

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

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

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

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the

denominator of which is the total sales of the taxpayer everywhere during the tax period.

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

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

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

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

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

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

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

(A) Separate accounting;

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

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

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. In determining the fairness of any allocation or apportionment, the Secretary of Revenue may give consideration to the taxpayer's previous reporting and its consistency with the requested relief.

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

(1) Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2008, business income of a corporation that is a member of a unitary business that consists of two or more corporations, at least one of which does not transact its entire business in this State, is determined by combining the business income of either all corporations, other than as set forth below, that are water's-edge basis members or all corporations, other than as set forth below, that are worldwide members of the unitary business. All transactions among included corporations of the unitary business are eliminated in determining the business income of a corporation that is a member of that unitary business. Business income of the following corporations is not included in the determination of combined business income:

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

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

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

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

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

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

(2) Notwithstanding any contrary provisions of this article, all corporations that are required to compute business income under paragraph (1) are entitled to apportion such business income when one corporation of the same unitary business is entitled to apportion such business income. Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2008, the denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1) shall be computed on a combined basis for all included corporations of the unitary business. All transactions among included corporations of the unitary business are eliminated in computing the numerator and denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1). The apportionment fraction of the following corporations is not included in the determination of the combined apportionment fraction:

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

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

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

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

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

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

(3) A corporation that is required to compute its business income under paragraph (1) shall apportion such combined business income by multiplying such combined business income by a fraction which is the combined apportionment fraction set forth in paragraph (2).

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

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

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

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

4. ***

(c) (1) The net loss deduction shall be the lesser of two million dollars (\$2,000,000) or 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[.] for taxable years that begin on or prior to December 31, 2008. The net loss deduction for any taxable year that begins during calendar year 2008 is further limited by the provisions of paragraph (4). Except as set forth in paragraph (4), there is no maximum on the amount of the net loss deduction allowed for taxable years beginning on or after January 1, 2009. 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 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

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 two million dollars (\$2,000,000).]

(3) The entire net loss for a taxable year that begins on or after January 1, 2008, is available to be carried over to a taxable year that begins on or after January 1, 2009, pursuant to the schedule set forth in paragraph (2) and shall be carried over to the earliest taxable year to which it may be carried pursuant to the schedule set forth in paragraph (2).

(4) The amount of unused net loss from all taxable years that begin prior to January 1, 2008, that may be carried over to any taxable year that begins on or after January 1, 2008, is limited to two million dollars (\$2,000,000) per taxable year and may only be used by the corporation that realized the net loss. If a corporation is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause 2, it may only use such loss in a year to the extent that it has taxable income before use of such loss determined as if it were a separate company.

(5) Any net loss realized for a taxable year that begins on or after January 1, 2008, by one corporation of a unitary business may be used by other corporations of the same unitary business, provided that the corporation that realized the net loss must first use the portion of such net loss to reduce its taxable income to zero. Other corporations of the same unitary business that have insufficient net losses of their own to reduce their tax liabilities to zero may then use the remainder of such net loss in proportion to their remaining taxable incomes before the application of such loss.

(6) Any net loss realized for a taxable year that begins on or after January 1, 2008, unused by a corporation which subsequently becomes a member of another unitary business may only be used by that corporation.

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

2. All corporations of a unitary business shall have a common taxable year for purposes of computing tax due under this article. The taxable year for such purposes is the common taxable year adopted, in a manner prescribed by the department, by all corporations of a unitary business. The common taxable year must be used by all corporations of

that unitary business in the year of adoption and all future years unless otherwise permitted by the department.

(7) "Tax haven." A jurisdiction that at the beginning of a taxable year is a tax haven as identified by the Organization for Economic Co-operation and Development, plus the sovereignties of Bermuda, the Cayman Islands, the Bailiwick of Jersey and the Grand Duchy of Luxembourg.

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

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

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

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

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

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

5. Any member that is a "controlled foreign corporation" as defined in section 957 of the Internal Revenue Code of 1986 (26 U.S.C. § 957), to the extent the business income of that member is income defined in section 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to Federal treaties, and the apportionment factor related to that income; any item of income received by a controlled foreign corporation and the apportionment factor related to such income shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that such income was subject to an effective rate of income tax imposed by a foreign country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11).

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

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

(11) "Separate company." A corporation that is not a member of

a unitary business that consists of two or more corporations.

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

Section 13. Section 402(b) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 402. Imposition of Tax.—* * *

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

Taxable Year	Tax Rate
January 1, 1995, [and each taxable year thereafter] through taxable years beginning December 31, 2007	9.99%
January 1, 2008, and each taxable year thereafter	7.90%

* * *

Section 14. Section 403 of the act, amended September 9, 1971 (P.L.437, No.105), June 23, 1982 (P.L.610, No.172), July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97, No.22) and repealed in part December 19, 1990 (P.L.834, No.198) is amended to read:

Section 403. Reports and Payment of Tax.—(a) [For the purpose of ascertaining the amount of tax payable under this article, it] It shall be the duty of every corporation, liable to pay tax under this article, on or before April 15, 1972, and each year thereafter, to transmit to the department, upon a form prescribed[, prepared and furnished] by the department, an annual report under oath or affirmation of its president, vice-president [or other principal officer, and of its], treasurer [or], assistant treasurer or other authorized officer, of net income taxable under the provisions of this article. Such report shall set forth:

(1) A true copy of its return to the Federal Government of the annual taxable income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate;

(2) If no return was filed with the Federal Government the report made to the department shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the department may require. Upon receipt of the report, the department shall promptly forward to the Department of State, the names of the president, vice-president, secretary and treasurer of the corporation and the complete street address of the principal office of the corporation for inclusion in the records of the Department of State relating to corporation.

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

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

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

(i) All corporations included in the unitary business.

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

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

(a.2) (1) Activities that evidence a significant flow of value

among commonly controlled corporations, include, but are not limited to, the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

(iii) Lending funds or guaranteeing loans.

(iv) Interplay in the area of corporate expansion.

(v) Providing technical assistance.

(vi) Supervising.

(vii) Providing general operational guidance.

(viii) Providing overall operational strategic advice.

(ix) Common use of trade names and patents.

(2) Significant flow of value must be more than the flow of funds arising out of passive investment and consists of more than periodic financial oversight.

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

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

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

(iii) Strong centralized management of corporations.

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

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

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

(a.4) As far as applicable to a specific unitary business, unless there is a revision of applicable State law or unless a corporation is not included under the provisions of this article, there is a rebuttable presumption for all tax years that begin in years 2008 and 2009 that a unitary business of two or more corporations includes at least all corporations that are part of a unitary business under the law of any state of the United States for the same tax year.

(a.5) Unless an election is made to use a worldwide basis of accounting, a corporation that is a member of a unitary business of two or more corporations must determine its business income and apportionment factor upon a water's-edge basis. This basis applies to all corporations of the unitary business. If an election is made to use a worldwide basis of accounting, all corporations of the unitary business must make the election, upon a form, prescribed, prepared and furnished by the department. This election binds all corporations of the unitary business for the period of time that the election remains in effect. An initial election is binding for a period of seven years. Subsequent elections are binding for a period of five years.

(b) [For the purpose of ascertaining the amount of tax payable under this article for the taxable year 1971, and each taxable year thereafter, it shall be the duty of every corporation liable to pay tax under this article, on or before April 30, 1971, and on or before the end of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, and each year thereafter, to transmit in like form and manner an additional tentative report and make payment pursuant to the provisions of section 3003: Provided, That in making such report and payment for the calendar year 1971 and each year thereafter and for fiscal years commencing during the calendar year 1971, and each year thereafter the tax base from the immediate prior year, upon which the tentative tax computation is to be made under said section 3003, shall be computed as if the tax base for such immediate prior year had been determined under the applicable provisions of the act of March 4, 1971 (Act No.2). For taxable years commencing with calendar year 1986 and for each taxable year through taxable year 1991, corporations shall not report and pay tentative tax on account of the corporate net income tax, but shall, on or before April 15 for calendar year taxpayers and on or before the fifteenth day of the fourth month of the fiscal year for fiscal year taxpayers, report and pay estimated corporate net income tax pur-

suant to section 3003.2 of this act: Provided, however, That tentative tax on account of any other tax which is imposed as the result of the adoption by reference of this part or section shall continue to be imposed. For taxable years commencing on or after January 1, 1992, corporations shall report and pay estimated tax pursuant to section 3003.2 on or before March 15 for calendar year taxpayers and on or before the fifteenth day of the third month for fiscal year taxpayers.] It shall be the duty of each corporation liable to pay tax under this article to pay estimated tax pursuant to section 3003.2 and to make final payment of the tax due for the taxable year with the annual report required by this section.

(c) The amount of all taxes, imposed under the provisions of this article, not paid on or before the times as above provided, shall bear interest as provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," from the date they are due and payable until paid, except that if the taxable income has been, or is increased by the Commissioner of Internal Revenue, or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute [a] an administrative petition [for resettlement, a petition for review,] or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it in the manner prescribed by law.

(d) If the officers of any corporation shall neglect, or refuse to make any report as herein required, or shall knowingly make any false report, the following percentages of the amount of the tax shall be added by the department to the tax determined to be due on the first one thousand dollars (\$1,000) of tax ten per cent, on the next four thousand dollars (\$4,000) five per cent, and on everything in excess of five thousand dollars (\$5,000) one per cent, no such amounts added to the tax shall bear any interest whatsoever.

(e) If any corporation closes its fiscal year not upon December 31, but upon some other date, and reports to the Federal Government as of such other date, or would so report were it to make a return to the Federal Government, such corporation shall certify such fact to the department, and shall make the annual report, herein required, within thirty days after the return to the Federal Government is due, or would be due were it to be required of such corporation, subject in all other respects to the provisions of this article. [The tentative report required of such corporation shall be due not later than four months after the end of the next preceding fiscal year.]

(f) If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the taxable income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified.

Section 15. Section 404 of the act is amended to read:

Section 404. Consolidated Reports.—(a) The department shall not permit any corporation owning or controlling, directly or indirectly, any of the voting capital stock of another corporation or of other corporations, subject to the provisions of this article, to make a consolidated report, showing the combined net income.

(b) This section applies to taxable years beginning prior to January 1, 2008.

Section 16. Section 406 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

Section 406. Changes Made by Federal Government.—(a) If the amount of the taxable income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of Internal Revenue or by any other agency or court of the United States, such corporation, within thirty days after the receipt of such final change or correction, shall make a corrected report, under oath or affirmation, to the department showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of such correction, which results in an increase in taxable income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, there should be any change made in the amount of the taxable income of any corporation upon which tax is imposed by this article, the department shall have the power, and its duty shall be to [resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General, as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue, as in the case of original settlements.] determine and assess the taxpayer's unpaid or unreported liability for tax due the Commonwealth, or to credit the taxpayer's account as appropriate.

(c) Where a report of change, correction, or redetermination of Federal income, or Federal tax, has been filed after [a petition for review, or] an administrative or a judicial appeal has been taken, such report shall be deemed a part of the original annual report upon petition of the taxpayer at any subsequent proceeding as though it had been filed with such original report, and no separate [petition for review or] appeal from [the resettlement] an assessment resulting from [such] the report of change, correction, or redetermination shall be necessary to the extent the identical issues for the taxable year have been raised in the appeal.

(d) The provisions of this section shall not be construed so as to permit [a resettlement] an assessment based upon the allowance of any deduction on account of net operating losses, sustained in other fiscal or calendar years, that are not allowed as deductions under the definition of "taxable income" as contained in this article.

(e) The provisions of this section shall apply to every corporation which was doing business in Pennsylvania in the year for which the Federal income has been changed, irrespective of whether or not such corporation has thereafter merged, consolidated, withdrawn or dissolved. Any clearance certificate issued by the department shall be conditioned upon the requirement that in the event of a change in Federal income for any year for which taxes have been paid to the Commonwealth, the corporation or its successor or its officers or its directors shall file with the department a report of change and pay any additional State tax resulting therefrom.

Section 17. The heading of Part IV of Article IV of the act is amended to read:

PART IV
[SETTLEMENT AND RESETTLEMENT]
ASSESSMENT AND COLLECTION OF TAX

Section 18. Section 407 of the act is amended by adding a subsection to read:

Section 407. Settlement and Resettlement.—* * *

(e.1) This section applies to taxable years beginning prior to January 1, 2008.

Section 19. The act is amended by adding sections to read:

Section 407.1. Assessments.—(a) If the department determines that unpaid or unreported tax is due the Commonwealth, the department shall issue an assessment.

(b) A notice of assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice shall set forth the basis of the assessment. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the assessment shall be without prejudice to the right of the taxpayer to file a petition for reassessment in the manner prescribed by Article XXVII.

(c) In the event that a taxpayer fails to file a report for a tax governed by this article, the department may issue an estimated assessment, based upon the records and information available or that may come into the department's possession. If prior to the filing of a report the department estimates that additional unpaid or unreported tax is due the Commonwealth, the department may issue additional estimated assessments.

(d) A notice of estimated assessment and demand for payment shall be mailed by certified mail to the taxpayer. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the estimated assessment does not eliminate the taxpayer's obligation to file a report.

(e) A taxpayer shall have no right to petition for reassessment, petition for refund or otherwise appeal a notice of estimated assessment

except as provided in subsection (f).

(f) The department shall remove an estimated assessment within ninety days of the filing of a report and other information required to determine the tax due the Commonwealth whereupon the department may issue an assessment as provided in subsection (a). Any tax due the Commonwealth that is included in an estimated assessment shall retain its lien priority as of the date of the estimated assessment to the extent such amount is included with an assessment issued upon the review of the filed report.

Section 407.2. Jeopardy Assessments.—(a) If the department believes that the assessment or the collection of unpaid or unreported tax will be jeopardized in whole or in part by delay, it shall issue a jeopardy assessment.

(b) If the department believes that a taxpayer intends to depart from the Commonwealth, remove the taxpayer's property from the Commonwealth, conceal himself or property of the taxpayer from the Commonwealth, or to do any other act that may prejudice or render wholly or partly ineffectual any action to collect any tax for the prior or current tax periods unless the action is brought without delay, the department shall declare the current tax period of the taxpayer immediately terminated. In this case, the department shall issue a jeopardy assessment for the tax period declared terminated and for all prior tax periods, whether or not the time otherwise allowed by law for filing a report or paying the tax has expired.

(c) A notice of jeopardy assessment and demand for payment shall be mailed by certified mail to the taxpayer. The notice of jeopardy assessment shall include the amount of the bond or other security required to stay collection of the assessment.

(d) The jeopardy assessment shall be paid to the department upon receipt of the notice of jeopardy assessment. Payment of the jeopardy assessment does not eliminate the taxpayer's obligation to file a report. If prior to the filing of a report the department estimates that additional unpaid tax is due the Commonwealth, the department may issue additional jeopardy assessments or estimated assessments pursuant to section 407.1.

(e) A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once. The following apply:

(1) The collection of the whole or any amount of a jeopardy assessment may be stayed, at any time before the assessment becomes final, by filing with the department a bond or other security in such amounts as the department may deem necessary not exceeding one hundred twenty per cent of the tax for which the stay is desired.

(2) Upon the filing of the bond or other security the collection of the amount assessed that is covered by the bond or other security shall be stayed. The taxpayer shall have the right to waive the stay at any time in respect of the whole or any part of the amount covered by the bond or other security. If the taxpayer waives any part of the amount covered by the bond or other security, then the bond or other security shall be proportionately reduced upon payment of the amount waived. If any portion of the jeopardy assessment is abated, the bond or other security shall be proportionately reduced at the request of the taxpayer.

(f) (1) A taxpayer may prevent a jeopardy assessment from becoming final by filing a petition for reassessment with the department within thirty days after the mailing date of the notice of jeopardy assessment. The issues to be addressed in the review of the petition shall include:

(i) Whether the making of the jeopardy assessment is reasonable under the circumstances.

(ii) Whether the amount assessed as a result of the jeopardy assessment is appropriate under the circumstances.

(2) The department shall issue a decision and order disposing of a petition filed under paragraph (1) within sixty days after receipt of the petition. Notice of the department's decision and order disposing of the petition shall be mailed to the petitioner.

(3) A taxpayer may file a petition for review of the department's decision and order under paragraph (2) in Commonwealth Court within 30 days after the following:

(i) The mailing date of the department's notice of decision and order on a petition for reassessment of a jeopardy assessment.

(ii) If the petition is not disposed of by the department within sixty days after receipt, the sixtieth day following the date the petition

was received by the department.

(4) If it is determined that the making of the jeopardy assessment is unreasonable or that the amount assessed is inappropriate, the assessment may be abated, the assessment may be redetermined in whole or in part, or the department or the taxpayer may be directed to take such other actions as may be appropriate.

(g) Any determination made pursuant to a petition for reassessment under this section shall be final and conclusive upon exhaustion of the appeal rights provided in this section and shall not be reviewed in any other proceeding.

(h) (1) In an action under this section involving the issue of whether the making of a jeopardy assessment is reasonable under the circumstances, the burden of proof in respect to such issue shall be upon the department.

(2) In an action under this section involving the issue of whether an amount assessed as a result of jeopardy assessment is appropriate under the circumstances, the burden of proof in respect of such issue shall be upon the taxpayer.

Section 407.3. Limitations on Assessments.—(a) Tax may be assessed within three years after the date the report is filed.

(b) Tax may be assessed at any time if a taxpayer fails to file a report required by law.

(c) Tax may be assessed at any time if the taxpayer files a false or fraudulent report with intent to evade tax imposed by the tax laws of this Commonwealth.

(d) If at any time within the time limitations specified in this section the department is not satisfied with its determination of the taxpayer's liability, the department may strike all, or any part of, a previously issued assessment or may issue additional assessments of tax.

(e) The department may, within three years of the granting of any refund or credit or within the period in which an assessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

(f) For purposes of this section, a report filed before the last day prescribed for filing shall be deemed to have been filed on the last day.

Section 407.4. Extension of Limitation Period.—Notwithstanding section 407.3, where, before the expiration of the period prescribed in section 407.3, a taxpayer has consented in writing that such period be extended, the amount of tax due may be assessed at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

Section 20. Section 408(b) of the act, amended June 23, 1982 (P.L.610, No.172), is amended to read:

Section 408. Enforcement; Rules and Regulations; Inquisitorial Powers of the Department.—* * *

(b) The department, or any agent authorized in writing by it, is hereby authorized to examine the books, papers, and records, and to investigate the character of the business of any corporation in order to verify the accuracy of any report made, or if no report was made by such corporation, to ascertain and [settle] assess the tax imposed by this article. Every such corporation is hereby directed and required to give to the department, or its duly authorized agent, the means, facilities, and opportunity for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations, or verifications required to be made by this article, shall be confidential, except for official purposes, and any person divulging such information shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) and costs of prosecution, or to undergo imprisonment for not more than six months, or both. Nothing in this section shall preclude the department from providing public information, as defined in section 403(a)(3), to other government units. Any identification number provided by the department to another governmental unit for governmental purposes shall continue to be confidential information.

* * *

Section 21. The act is amended by adding sections to read:

Section 408.1. Collection of Tax.—The department shall collect the taxes imposed by this article in the manner provided by law for the

collection of taxes imposed by the laws of this Commonwealth.

Section 408.2. Actions to Collect Taxes; Defenses.—(a) The department may initiate actions to collect any tax:

(1) Immediately, in the case of any amount related to tax reported as due the Commonwealth by the taxpayer that is not paid by the due date for payment of the tax.

(2) After ninety days from the mailing date of a notice of assessment, if no petition for reassessment has been filed.

(3) After ninety days from the mailing date of the department's decision and order disposing of a petition for reassessment, if no petition for review has been filed.

(4) After thirty days from the mailing date of the decision and order of the Pennsylvania Tax Review Tribunal upon a petition for review or from the expiration of the tribunal's time for acting upon such petition, if no decision has been made.

(5) Immediately, in all cases of judicial sales, receiverships, assignments or bankruptcies.

(6) Immediately, in the case of jeopardy assessments as provided by section 407.2.

(b) A taxpayer shall not be permitted to raise any defense to the department's collection action that might have been determined by the department, the Pennsylvania Tax Review Tribunal or the courts if the taxpayer had properly pursued its administrative remedies under this article.

Section 22. Section 1101(e) of the act, amended December 11, 1979 (P.L.499, No.107), is amended to read:

Section 1101. Imposition of Tax.—* * *

(e) Time to File Reports.—The time for filing annual reports may be extended, estimated [settlements] 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) 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) 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) 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.

* * *

Section 23. Section 1111-C of the act, amended July 2, 1986 (P.L.318, No.77) and July 7, 2005 (P.L.149, No.40), is amended to read:

Section 1111-C. [Determination] Assessment and Notice of Tax; Review.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make [a determination] an assessment of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such [determinations] assessments shall be made within three years after the date of the recording of the document, subject to the following:

(1) If the taxpayer underpays the correct amount of the tax by twenty-five per cent or more, the tax may be assessed at any time within six years after the date of the recording of the document.

(2) If any part of an underpayment of tax is due to fraud or an undisclosed, intentional disregard of rules and regulations, the full amount of the tax may be assessed at any time.

(b) Promptly after the date of such [determination] assessment,

the department shall send by certified mail a copy thereof, including the basis of the assessment, to the person against whom it was made. [Within ninety days after the date upon which the copy of any such determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitle him to such redetermination, and it shall be supported by affirmation that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department within six months after the date of filing of any petition for redetermination to dispose of the petition. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

(c) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.] Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

Section 24. Section 1112-C of the act, amended July 2, 1986 (P.L.318, No.77), is amended to read:

Section 1112-C. Lien.—(a) Any tax determined to be due by the department and remaining unpaid after demand for the same, and all penalties and interest thereon, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person but only after said lien has been entered and docketed of record by the prothonotary of the county where such property is situated.

(a.1) At any time after it makes [a determination] an assessment of additional tax, penalty or interest, the department may transmit to the prothonotaries of the respective counties certified copies of all liens for such taxes, penalties and interest, and it shall be the duty of each prothonotary receiving the lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. After the department's [determination] assessment becomes final, a writ of execution may directly issue upon such lien without the issuance and prosecution to judgment of a writ of scire facias: Provided, That not less than ten days before issuance of any execution on the lien, notice shall be sent by certified mail to the taxpayer at his last known post office address. No prothonotary shall require as a condition precedent to the entry of such liens, the payment of any costs incident thereto.

(b) The lien imposed hereunder shall have priority from the date of its recording as aforesaid, and shall be fully paid and satisfied out of the proceeds of any judicial sale of property subject thereto before any other obligation, judgment, claim, lien or estate to which said property may subsequently become subject, except costs of the sale and of the writ upon which the sale was made, and real estate taxes and municipal claims against such property, but shall be subordinate to mortgages and other liens existing and duly recorded or entered of record prior to the recording of the tax lien. In the case of a judicial sale of property subject to a lien imposed hereunder upon a lien or claim over which the lien imposed hereunder has priority, as aforesaid, such sale shall discharge the lien imposed hereunder to the extent only that the proceeds are applied to its payment, and such lien shall continue in full force and effect as to the balance remaining unpaid.

(c) The lien imposed hereunder shall continue for five years from the date of its entry of record, and may be renewed and continued in the manner now or hereafter provided for the renewal of judgments, or as may be provided in the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

Section 25. Section 1113-C of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1113-C. Refunds.—(a) Whenever the amount due upon [determination, redetermination] assessment or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no [determination] assessment of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed under [section 3003.1] Article XXVII.

Section 26. Section 1502(f) of the act, amended October 14, 1988 (P.L.737, No.106), is amended to read:

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—* * *

(f) If any institution shall neglect or refuse to make any report required by this article, such institution shall be liable to a penalty of five thousand dollars (\$5,000), which shall be [settled] assessed in the same manner as the tax imposed by this article is [settled] assessed.

Section 27. Section 2005 of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2005. Assessment by Department.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.

(b) Promptly after the date of such assessment, the department shall send by [registered] certified mail a copy of the assessment, including the basis of the assessment, to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay, and that the facts set forth therein are true. It shall be the duty of the department, within six months after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.

(c) Within [sixty] ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may, by petition, request the [Board of Finance and Revenue] Tax Review Tribunal to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing, as hereinafter provided. The [Board of Finance and Revenue] Tax Review Tribunal shall act finally in disposition of such petitions filed with it within six months after they have been received, and, in the event of the failure of said [board] tribunal to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The [Board of Finance and Revenue] Tax Review Tribunal may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the [Board of Finance and Revenue] Tax Review Tribunal shall be given by mail, or otherwise, to the department and to the petitioner.

(d) In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

(e) Whenever any assessment of additional tax is not paid within ninety days after the date of the assessment, if no petition for reassessment has been filed, or within [sixty] ninety days from the date of reassessment, if no petition for review has been filed, or within [sixty] thirty days from the date of the decision of the [Board of Finance and Revenue] Tax Review Tribunal upon a petition for review, or the expiration of the [board's] tribunal's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Office of Attorney General to collect such assessment. In such event, in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the [Board of Finance and Revenue] Tax Review Tribunal or the courts. The department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or

duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

Section 28. Sections 2009(f) and 2181 of the act, amended May 7, 1997 (P.L.85, No.7), are amended to read:

Section 2009. Refund of Tax.—* * *

(f) In each of the above cases the department shall pay or issue to the manufacturer credits of sufficient value to cover the refund. Such credits may be used by the manufacturer for the payment of any taxes due by him to the Commonwealth. The procedure for refund in any case shall be completed by the department within sixty days after the proper affidavits have been filed with the department under section [3003.1] 2703.

Section 2181. Refund of Tax.—(a) A refund shall be made of any tax to which the Commonwealth is not rightfully or equitably entitled provided the Commonwealth determines the refund is due or [application] a petition for refund is made [within the appropriate time limit as set forth in subsection (d)] pursuant to section 2703.

(b) Interest shall be paid on refundable tax at the same rate as the interest rate on deficiencies provided for in section 2143.

(c) Refund shall be made in cash to the party who paid the tax or to his assignee or as directed by the court.

[(d) Application for refund of tax shall be made within three years after:

(1) the court has rescinded its order and adjudication of presumed death when the refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive;

(2) termination of litigation establishing a right to a refund; no application for refund shall be necessary when the litigation has been with the Commonwealth over liability for the tax or the amount of tax due;

(3) it has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal Government beyond that admitted to be payable, and in consequence of which an estate tax was paid under section 2117 was not payable;

(4) a final judgment holding that a provision of this article under which tax has been paid is unconstitutional or that the interpretation of a provision of this article under which tax has been paid was erroneous; or

(5) the date of payment, or the date of the notice of the assessment of the tax, or the date the tax becomes delinquent, whichever occurs later, in all other cases.

(e) An application for refund of tax shall be made to the department.

(e.1) A petition to review the decision and order of the department on a petition for refund may be made to the Board of Finance and Revenue under this article.

(f) The action of the Board of Finance and Revenue on all applications for refund of tax may be appealed as provided for in 42 Pa.C.S. § 933 (relating to appeals from government agencies).]

(g) As much of the moneys received as payment of tax under this article as shall be necessary for the payment of the refunds provided for in this article with interest is appropriated for the payment of such refunds.

Section 29. The act is amended by adding articles to read:

ARTICLE XXVII

PROCEDURE AND ADMINISTRATION

Section 2701. 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:

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

Section 2702. Petition for reassessment.

(a) General rule.—A taxpayer may file a petition for reassessment with the department within 90 days after the mailing date of the notice of assessment.

(b) Special rule for shares taxes.—Notwithstanding any provision of law to the contrary, section 2703(e) (relating to petition for refund) shall constitute the exclusive method by which an appeal from the as-

assessment of the tax imposed by Article VII (relating to bank and trust company shares tax) or VIII (relating to title insurance companies shares tax) may be made.

(c) Application to inheritance and estate taxes.—This section shall not apply to the taxes imposed by Article XXI (relating to inheritance tax). Part XI (relating to disputed tax) of Article XXI shall provide the exclusive procedure for protesting the appraisal and assessment of taxes imposed by Article XXI.

Section 2703. Petition for refund.

(a) General rule.—A taxpayer may file a petition for refund of tax with the department within three years after the report was filed or within two years after payment, whichever is later. Except as provided by section 407.1 (relating to assessments), if no report is filed by the taxpayer, a taxpayer may file a petition for refund of tax with the department within two years after payment. If tax is required to be paid by means of a stamp, a taxpayer may file a petition for refund of tax with the department within three years after payment.

(b) Limit on amount of refund.—

(1) If a petition for refund is filed by the taxpayer during the three-year period prescribed in subsection (a), the amount of the refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the petition, equal to three years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the petition.

(2) If the petition was not filed within the three-year period prescribed in subsection (a), the amount of the refund shall not exceed the portion of the tax paid within the two years immediately preceding the filing of the petition.

(3) If no report was filed by the taxpayer, the amount of the refund shall not exceed the portion of the tax paid within the two years immediately preceding the filing of the petition.

(c) Special rules applicable in case of extension agreements.—If an agreement under the provisions of section 261 (relating to extension of limitation period), 349 (relating to extension of limitation period) or 407.4 (relating to extension of limitation period) extending the period for assessment of tax is made within the period prescribed in subsection (a) for the filing of a petition for refund, the following rules shall apply:

(1) The period for filing a petition for refund provided in subsections (a) and (b)(1), shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof under the provisions of section 261, 349 or 407.4.

(2) If a petition is filed after the execution of the agreement and within six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof, the amount of the refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (b)(2) if a claim had been filed on the date the agreement was executed.

(3) This subsection shall not apply in the case of a petition filed if no claim is filed, either:

(i) prior to the execution of the extension agreement; or

(ii) more than six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(d) Refund of inheritance and estate tax.—A taxpayer may file a petition for refund of tax imposed by Article XXI (relating to inheritance tax) with the department within three years after any of the following:

(1) The court has rescinded its order and adjudication of presumed death when the refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive.

(2) Termination of litigation establishing a right to a refund. A petition for refund shall not be necessary when the liti-

gation has been with the Commonwealth over liability for the tax or the amount of tax due.

(3) It has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal Government beyond that admitted to be payable, and in consequence of which an estate tax was paid under section 2117 (relating to estate tax) was not payable.

(4) The date of payment, or the date of the notice of the assessment of the tax, or the date the tax becomes delinquent, whichever occurs later, in all other cases.

(e) Special rule for shares taxes.—Upon sufficient cause shown by a taxpayer that the payment of tax assessed under Article VII (relating to bank and trust company shares tax) or VIII (relating to title insurance companies shares tax) would irreparably harm the taxpayer, the department may take jurisdiction of a petition for refund challenging the assessed tax without the tax being paid if the petition is filed within two years after the mailing date of the assessment.

(f) Payment date.—For purposes of this section, any payment of estimated tax, withholding of tax or other payment of tax made prior to the due date for payment of the tax shall be deemed to have been made on the due date for payment of the tax.

(g) Liquid fuels and fuels tax claims.—This section shall not apply to claims for refund or reimbursement of liquid fuels and fuels tax required to be submitted to the Board of Finance and Revenue under 75 Pa.C.S. Ch. 90 (relating to liquid fuels and fuels tax). The provisions of 75 Pa.C.S. § 9017 (relating to refunds) shall provide the exclusive procedure for those claims.

(h) Construction.—For purposes of this section, the term "report" shall be interpreted to include a tax return.

Section 2704. Petition procedure.

(a) Content of petition.—

(1) A petition for reassessment shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been erroneously assessed.

(iii) The basis upon which the taxpayer claims that the assessment is erroneous.

(2) A petition for refund shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been overpaid.

(iii) The basis of the taxpayer's claim for refund.

(3) The petition shall be supported by an affidavit by the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts set forth in the petition are true.

(b) Request for hearing.—Upon written request of the petitioner or when deemed necessary by the department, the department shall schedule a hearing to review a petition. The petitioner shall be notified by the department of the date, time and place where the hearing will be held.

(c) Decision and order.—The department shall issue a decision and order disposing of a petition on such basis as it deems to be in accordance with law.

(d) Time limit for decision and order.—The department shall issue a decision and order disposing of a petition within six months after receipt of the petition. The petitioner and the department may agree to extend the time period for the department to dispose of the petition for one additional six-month period. Notice of the department's decision and order disposing of the petition shall be mailed to the petitioner.

(e) Exception to time limit for decision and order.—If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction or at the Pennsylvania Tax Review Tribunal wherein any claim made in the petition may be established, the department, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question or questions involved in the petition has been decided. If consideration of the petition is deferred, the department shall issue a decision and order disposing of the petition within six months after the final judgment.

(f) Failure of department to take action.—The failure of the depart-

ment to dispose of the petition within the time period provided for by subsection (d) or (e) shall act as a denial of the petition. Notice of the department's failure to take action and the denial of the petition shall be mailed to the petitioner.

Section 2705. Review by Pennsylvania Tax Review Tribunal.

(a) Petition for review of a decision and order.—Within 90 days after the mailing date of the department's notice of decision and order on a petition filed with it, a taxpayer may petition the Pennsylvania Tax Review Tribunal to review the decision and order of the department.

(b) Petition for review of denial by department's failure to act.—A petition for review may be filed with the Pennsylvania Tax Review Tribunal within 90 days after the mailing date of the department's notice to the petitioner of its failure to dispose of the petition within the time periods prescribed by section 2704(d) or (e) (relating to petition procedure).

Section 2706. Burden of proof.

In all cases of petitions filed pursuant to this article, the burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 2707. Compromise of tax appeals.

(a) Compromise of tax.—The department, with the approval of the Attorney General, shall have the authority to compromise the liability for tax disputed in any petition on terms as it determines to be in the best interests of the Commonwealth.

(b) Compromise of penalties.—The department shall have the authority to compromise the liability for interest or penalties disputed in any petition on the terms as it determines to be in the best interests of the Commonwealth.

ARTICLE XXVIII
TAX REVIEW TRIBUNAL

Section 2801. 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:

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

"Judge." An administrative law judge appointed to the Pennsylvania Tax Review Tribunal pursuant to section 2802 (relating to Tax Review Tribunal; establishment).

"Tribunal." The Tax Review Tribunal established in section 2802 (relating to Tax Review Tribunal; establishment).

Section 2802. Tax Review Tribunal; establishment.

(a) Establishment.—The Tax Review Tribunal is hereby established as an administrative board in the Treasury Department and independent from the department.

(b) Appointment of judges.—The tribunal shall consist of no less than five qualified and competent administrative law judges, including a chief administrative law judge. The administrative law judges shall be appointed by the State Treasurer, with the approval of the Board of Finance and Revenue. The State Treasurer, with the approval of the Board of Finance and Revenue, shall have the power to appoint as many additional qualified and competent administrative law judges as may be necessary to fulfill the duties of the tribunal.

(c) Temporary appointees.—If the docket of the tribunal is congested or any judge of the tribunal is absent or unable to perform the duties of the office, the State Treasurer, with the approval of the Board of Finance and Revenue, may appoint qualified and competent persons who meet the minimum standards established by this article to temporarily serve as administrative law judges until the docket is no longer congested or the judge returns to the judge's official duties.

(d) Term of office.—Administrative law judges shall be appointed for terms of five years. The administrative law judges initially appointed upon the establishment of the tribunal shall be given terms of varying lengths so that all judges' terms do not expire in the same year. However, no appointment shall be for less than three years nor more than five years. Administrative law judges may be reappointed upon the expiration of their terms.

(e) Chief administrative law judge.—The State Treasurer, with the approval of the Board of Finance and Revenue, shall designate one of the administrative law judges as chief administrative law judge. The chief administrative law judge shall be responsible for assigning a hearing judge to every cause, matter and proceeding coming before the tribunal. The chief administrative law judge shall receive remuneration

above that of any other administrative law judge.

(f) Continuation in office.—Once appointed each judge shall continue in office until the judge's term expires and until a successor has been appointed and qualified.

(g) Vacancy.—A vacancy in the tribunal occurring otherwise than by expiration of a term shall be filled for the unexpired term.

(h) Removal.—The State Treasurer, with approval of the Board of Finance and Revenue, may remove an administrative law judge, after notice and an opportunity to be heard, for neglect of duty, inability to perform duties or malfeasance in office.

(i) Location of offices.—The offices of the tribunal shall be located separate and apart from the department.

Section 2803. Qualifications of judges and prohibition.

(a) Requirements.—Each judge of the tribunal must meet and maintain the following minimum requirements:

(1) Be a citizen of the United States.

(2) Be a resident of this Commonwealth.

(3) Be an attorney in good standing before the Supreme Court of Pennsylvania.

(4) Have at least five years experience in a position requiring substantial knowledge of Pennsylvania tax law and the tax appeal process.

(b) Oath of office.—Before entering upon the duties of office, a judge shall take and subscribe to an oath or affirmation to faithfully discharge the duties of the office.

(c) Prohibition.—Each judge shall be devoted full time during business hours to the duties of the office. No person, while a judge, shall engage in any other gainful employment or business nor hold another office or position of profit in a government of this Commonwealth, any other state or the United States.

Section 2804. Administration.

(a) Executive administrator.—The State Treasurer, with approval of the Board of Finance and Revenue, shall appoint an executive administrator who shall be responsible for the day-to-day administration and operation of the tribunal.

(b) Chief clerk.—The State Treasurer, with approval of the Board of Finance and Revenue, shall appoint a chief clerk who shall be responsible for recording all filings and maintaining a record of all proceedings before the tribunal. The chief clerk shall be responsible for certifying the record established at the tribunal in the event of an appeal to Commonwealth Court.

(c) Expenditures.—The chief administrative law judge or his designee may appoint and fix the compensation of accountants, attorneys, stenographers and other employees and make other expenditures, including expenditures for library, publications and equipment, as necessary to permit the tribunal to efficiently execute its functions.

(d) Limitation.—No employee of the tribunal shall act as attorney, representative or accountant for others in a matter involving any tax imposed or levied by the Commonwealth.

Section 2805. Jurisdiction of tribunal.

(a) Exclusive and final authority.—Except as permitted by section 2817 (relating to appeals), the tribunal shall be the sole, exclusive and final authority for the hearing, review and determination of questions of law and fact arising under a decision and order of the department pursuant to Article XXVII (relating to procedure and administration). Notwithstanding any other provision of law, the tribunal shall have jurisdiction over all matters relating to decisions of the department mailed after December 31, 2007, regarding reassessment, redetermination, resettlement or refund.

(b) Improper commencement.—Except as permitted by section 2817, no person shall contest any matter within the jurisdiction of the tribunal in any action, suit or proceeding in Commonwealth Court or any other court of the Commonwealth. If a person attempts to do so, then the action, suit or proceeding shall be transferred to the tribunal.

(c) Amounts asserted as due.—The taxpayer shall have the right to have the taxpayer's case heard by the tribunal prior to the payment of any of the amounts asserted as due by the department and prior to the posting of any bond except in any case:

(1) Involving the denial of a claim for refund.

(2) Where a bond is required by statute.

(d) Characterization of certain petitions.—If the taxpayer pays all or part of the tax or other amount at issue before the tribunal has ren-

dered a decision, the tribunal shall treat the taxpayer's petition as a protest of a denial of a claim for refund of the amount paid without further action on the part of the taxpayer.

(e) Constitutionality issues.—The tribunal shall decide questions regarding the constitutionality of the application of statutes to the taxpayer and the constitutionality of regulations promulgated by the department but shall not have the power to declare a statute unconstitutional on its face. A taxpayer desiring to challenge the constitutionality of a statute on its face may file a petition with the tribunal with respect to all issues other than the constitutional challenge and preserving the constitutional challenge until the entire matter, including the constitutional issue, is presented to the Commonwealth Court.

Section 2806. Filing fees.

(a) Fees.—Upon filing a petition pursuant to Article XXVII (relating to procedure and administration), the taxpayer shall pay to the chief clerk a fee in the amount of \$100, except that, in case of a petition filed in the small claims division as provided for in section 2816 (relating to small claims division), the fee shall be \$50. A similar fee shall be paid by other parties making an appearance in the proceeding, except that no fee shall be charged to a government body or government official appearing in a representative capacity.

(b) Records related fees.—The tribunal may fix a fee, not in excess of the fees charged and collected by the clerks of the Commonwealth Court, for comparing or for preparing and comparing a transcript of the record, or for copying any record, entry or other paper and the comparison and certification thereof.

(c) Disposition of fees.—All fees and other moneys received or collected by the tribunal shall be paid over to the State Treasurer and shall be held in the General Fund as miscellaneous receipts.

Section 2807. Pleadings.

(a) Commencement of proceeding.—A taxpayer may commence a proceeding in the tribunal by filing a petition for review as provided in Article XXVII (relating to procedure and administration).

(b) Taxpayer election.—A taxpayer may elect to proceed in the small claims division of the tribunal by filing a petition in the form prescribed by the tribunal for small claims. A taxpayer may not revoke an election to proceed in the small claims division and shall not have any further right to appeal or bring suit.

(c) Answer.—The department shall file its answer with the tribunal no later than 75 days after its receipt of the tribunal's notification that the taxpayer has filed a petition. Upon written request, the tribunal may grant up to 15 additional days to file an answer. If the petitioner files an amended petition as set forth in the preceding section, the department's time period for filing its responsive pleading shall run from the filing date of the amendment. The department shall serve a copy on the taxpayer's representative or, if the taxpayer is not represented, on the taxpayer, and shall file proof of service with the answer. Material facts alleged in the petition, if not expressly admitted or denied in the answer, shall be deemed admitted. If the department fails to answer within the prescribed time, all material facts alleged in the petition shall be deemed admitted.

(d) Reply.—The taxpayer may file a reply in the tribunal within 30 days after receipt of the answer. The taxpayer shall serve a copy on the authorized representative of the department and shall file proof of service with the reply. Material facts alleged in the answer, if not expressly admitted or denied in the reply, shall be deemed admitted. If the taxpayer does not file a reply, all material facts alleged in the answer shall be deemed denied. Upon the filing of a reply or 30 days after the filing of the answer if no reply is filed, the controversy shall be deemed at issue and scheduled for hearing.

(e) Amendment of pleading.—Either party may amend a pleading once without leave at any time before the period for responding to it expires. After expiration of the response period, a pleading may be amended only with the written consent of the adverse party or with the permission of the tribunal. The tribunal shall freely grant consent to amend upon such terms as may be just. Except as otherwise ordered by the tribunal, there shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Filing of the answer, or, if the answer has already been filed, the amended answer, shall be made no later than 75 days after filing of the amended petition. Filing of the reply or, if the reply has already been filed, the amended reply, shall be made within 30 days after filing of the amended

answer. The taxpayer may not amend a petition after expiration of the time for filing a petition, if the amendment would have the effect of conferring jurisdiction on the tribunal over a matter which otherwise would not come within its jurisdiction. An amendment of a pleading shall relate back to the time of filing of the original pleading unless the tribunal shall order otherwise either on motion of a party or on the tribunal's own initiative.

Section 2808. Presiding judge.

(a) Requirements for presiding judge.—There shall preside at the taking of evidence and conduct of all hearings one or more administrative law judges assigned by the chief administrative law judge as provided in section 2802 (relating to Tax Review Tribunal; establishment). The functions of all presiding judges shall be conducted in an impartial manner. Any judge may at any time withdraw from a proceeding if the judge deems himself disqualified, and the chief administrative law judge may require a withdrawal upon the appeal of any party from a decision of the presiding judge not to withdraw. Upon disqualification of any judge, the chief administrative law judge shall assign the matter to another judge.

(b) Authority of presiding judge.—The presiding judge shall have authority, subject to the provisions of this article and the published rules of the tribunal, to:

- (1) Administer oaths and affirmations.
- (2) Issue subpoenas authorized by law.
- (3) Rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken whenever the ends of justice would be served thereby.
- (4) Regulate the course of the hearing.
- (5) Hold conferences for settlement or simplification of the issues by consent of the parties.
- (6) Dispose of procedural requests or similar matters.
- (7) Make decisions or recommend decisions in conformity within this article.
- (8) Take any other action authorized by law or the rules of the tribunal.

(c) Presiding judge to decide.—The same presiding judge shall to the fullest extent possible preside at the reception of all evidence in a particular case to which the judge has been assigned. The same presiding judge who presides at the reception of evidence shall issue the proposed decision and order on the petition except where the presiding judge becomes unavailable to the tribunal.

Section 2809. Procedures in general.

(a) Admissibility of evidence.—Any oral or documentary evidence may be received, but the tribunal shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence.

(b) Submission of evidence.—A party is entitled to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The tribunal may adopt rules for the submission of all or part of the evidence in written form.

(c) Record, briefs and argument.—The transcript of a hearing, the transcript of testimony and exhibits, together with all papers and motions filed in the proceeding, constitutes the exclusive record for decision. Briefing and oral argument shall be held in accordance with rules established by the tribunal.

(d) Official notice of facts.—When the tribunal's decision rests on official notice of a material fact not appearing in the evidence in the record, upon notification that facts are about to be or have been noticed, any party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed. The tribunal in its discretion shall determine whether written presentations suffice or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances. Nothing in this subsection shall affect the application by the tribunal in appropriate circumstances of the doctrine of judicial notice.

(e) Actions of parties and counsel.—A party who fails to be represented at a scheduled conference or hearing after being notified of the conference or hearing, shall be deemed to have waived the opportunity to participate in the conference or hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished at the conference or hearing, or to recall for further examination of witnesses who were excused, unless the presiding judge shall determine that fail-

ure to be represented was unavoidable and that the interests of the other parties would not be prejudiced by permitting the reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by a panel of administrative law judges assigned by the chief administrative law judge, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the panel may reject any claim for relief or dismiss any proceeding and, with respect to counsel, may impose sanctions upon counsel or a party as appropriate or bar further participation by that counsel in any proceedings before the tribunal.

(f) Interlocutory appeals.—An interlocutory appeal from a ruling of a presiding judge shall be allowed to a panel of administrative law judges assigned by the chief administrative law judge upon certification by the presiding judge that the ruling involves a material question which should be resolved at that time. Notwithstanding the presiding judge's certification, the panel shall have the authority to dismiss summarily the interlocutory appeal if it should appear that the certification was improvident. An interlocutory appeal shall not result in a stay of the proceedings except upon a finding by the presiding judge or the panel that extraordinary circumstances exist.

Section 2810. Prehearing procedures.

(a) Conferences.—The presiding judge shall have the authority to hold one or more prehearing conferences during the course of the proceeding on the judge's motion or at the request of a party to the proceeding. The presiding judge may direct the parties to exchange their evidentiary exhibits and witness lists at a prehearing conference. Where good cause exists, the parties may at any time amend, by deletion or supplementation, their evidentiary exhibits and witness lists.

(b) Disclosure of information on witnesses.—At the prehearing conference or at some other reasonable time prior to the hearing as determined by rule of the tribunal or order of the president judge, each party to the proceeding shall make available to the other parties to the proceeding the names of the witnesses the party expects to call and the subject matter of the witnesses' expected testimony. Where good cause exists, the parties shall have the right at any time to amend, by deletion or supplementation, the list of names of the witnesses the parties plan to call and the subject matter of the expected testimony of those witnesses.

(c) Scheduling.—The presiding judge shall have the authority to impose schedules on the parties to the proceeding specifying the periods of time during which the parties may pursue discovery. The schedules and time periods shall be set with a view to accelerating disposition of the case to the fullest extent consistent with fairness.

Section 2811. Oaths and subpoenas.

(a) Oaths.—Any employee of the tribunal designated in writing for the purpose by the chief administrative law judge may administer oaths.

(b) Subpoenas.—A judge or the chief clerk of the tribunal, on the request of any party to the proceeding, shall have the power to issue subpoenas requiring the attendance of witnesses and giving of testimony and subpoenas duces tecum requiring the production of any returns, books, papers, documents and correspondence and other evidence pertaining to the matter under inquiry in the manner prescribed by the Pennsylvania Rules of Civil Procedure.

Section 2812. Discovery.

(a) Informal discovery preferred.—The parties to a proceeding shall make reasonable effort in good faith to achieve discovery by informal means before invoking the formal discovery mechanisms authorized by this article.

(b) Depositions.—Any party to the proceeding shall be able to take depositions of witnesses upon oral examination or written questions for purposes of discovering relevant, unprivileged information. To that end, a party may obtain subpoenas requiring the attendance of witnesses and the production of returns, books, papers, documents, correspondence and other evidence pertaining to the matter under inquiry.

(c) Interrogatories.—Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering relevant, unprivileged information. A party served with interrogatories may, before the time prescribed by the tribunal for answering the interrogatories, apply to the presiding judge for the holding of a prehearing conference for the mutual exchange of evidence exhibits and other information. Each interrogatory which requests information not previously supplied at a prehearing conference or hearing shall be answered sepa-

ately and fully in writing under oath unless it is objected to, in which event the reasons for the objections shall be stated in lieu of an answer. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections within the time prescribed by the tribunal unless otherwise specified, upon the party submitting the interrogatories. The party submitting the interrogatories may petition the presiding officer for an order compelling an answer to an interrogatory or interrogatories to which there has been an objection or other failure to answer.

(d) Requests for admissions.—A party to a proceeding may serve upon any other party a written request for the admission of any relevant, unprivileged, undisputed facts, the genuineness of any document described in the request, the admissibility of evidence, the order of proof and other similar matters. The parties shall stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the proceeding.

(e) Protective orders.—The presiding judge shall have the authority, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, to make any order which justice requires to protect the party or person.

(f) Fees and mileage costs.—Any witness subpoenaed or whose deposition is taken shall receive fees and mileage costs.

(g) Other discovery.—The tribunal may provide for other forms of discovery.

(h) Enforcement.—The tribunal may enforce its orders on discovery and other procedural issues, among other means, by deciding issues wholly or partly against the offending party.

Section 2813. Hearings.

(a) Proceedings.—Proceedings before the tribunal shall be tried de novo and, to the extent permissible under the Constitution of the United States and the Constitution of Pennsylvania, without a jury.

(b) Role of tribunal.—Except as set forth in this article or otherwise precluded by law, the tribunal shall take evidence, conduct hearings and issue final and interlocutory decisions.

(c) Hearings to be public; exceptions.—

(1) Except as set forth in paragraph (2), all hearings of the tribunal shall be transcribed and open to the public.

(2) On motion of either party the tribunal shall issue a protective order or an order closing part or all of the hearing from the public when the party opposing disclosure of certain information shows good cause to protect the information from being disclosed to the public.

(d) Evidence.—The tribunal shall admit relevant evidence if it is probative of a material fact in controversy. The tribunal shall exclude irrelevant and unduly repetitious evidence. A rule of privilege recognized by law applies.

(e) Testimony.—Testimony may be given only on oath or affirmation.

(f) Pleadings to conform to proof.—The petition and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing unless a party satisfies the tribunal that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's petition to conform to the proof would confer jurisdiction on the tribunal over a matter that would not otherwise come within its jurisdiction.

(g) Official reporting.—Proceedings before the tribunal, except those before the small claims division as provided for in section 2816 (relating to small claims division) shall be officially reported. The Commonwealth shall pay the expense of reporting from the appropriation for the tribunal.

Section 2814. Decisions.

(a) Decision in writing.—The tribunal shall render its decision in writing, including a concise statement of the facts found and the conclusions of law reached. The tribunal's decision shall, subject to law, grant the relief, invoke the remedies and issue the orders as it deems appropriate to carry out its decision.

(b) Failure to render decision.—If the tribunal fails to render a decision within the prescribed time period, either party may institute an action in mandamus to compel the issuance of a decision.

(c) Precedent.—Except as provided in section 2816(k) (relating to small claims division), the tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the tribunal in subse-

quent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the tribunal in subsequent cases involving the same material facts unless the tribunal's interpretation or application conflicts with that of an appellate court or the tribunal provides satisfactory reasons for reversing prior precedent, provided:

(1) It is necessarily involved and essential to the determination of the case.

(2) There is a full consideration of the question by the tribunal.

(3) The decision is a professed deliberate determination of the question.

Section 2815. Proposed decision; review by panel.

(a) Proposed decision and order.—The presiding judge shall issue a proposed decision and order, including proposed findings of fact and conclusions of law, within six months after submission of the last brief filed subsequent to completion of the hearing or, if briefs are not submitted, then no later than six months after completion of the hearing.

(b) Final order; submission to panel.—The proposed decision and order shall be subject to review by a panel of administrative law judges assigned by the chief administrative law judge upon the filing of exceptions pursuant to subsection (c). The panel shall include the presiding judge that issued the proposed decision and order. If no exceptions are filed, the proposed decision and order shall become final, without further action.

(c) Exceptions procedure.—

(1) Within 15 days of the issuance of the proposed decision and order, a party may file exceptions to the proposed decision and order including:

(i) alternative proposed findings of fact or conclusions of law, if appropriate; and

(ii) the supporting reasons for the exceptions and any alternative proposed findings of fact or conclusions of law.

(2) Within 30 days of the filing of exceptions to the proposed decision and order, the panel shall either:

(i) issue an order adopting the proposed decision and order as the final decision and order of the tribunal; or

(ii) issue an alternative decision and order, including findings of fact and conclusions of law, as the final decision and order of the tribunal.

(d) Record.—The record shall show the ruling on each finding of fact, conclusion of law or exception presented. All decisions and orders, including proposed decisions and orders, are a part of the record and shall include a statement of:

(1) Findings and conclusions, and the reasons or basis for the findings and conclusions, on all material issues of fact, law or discretion presented on the record.

(2) The appropriate rule, order, relief or denial thereof.

(e) Decision final.—A final decision and order shall finally decide the matters in controversy unless any party to the matter timely appeals the decision as provided for in section 2817 (relating to appeals).

(f) Effect.—A final decision and order shall have the same effect and shall be enforced in the same manner as a judgment of any court of competent jurisdiction.

Section 2816. Small claims division.

(a) Establishment.—There is hereby established a small claims division of the tribunal.

(b) Judge to preside.—An administrative law judge assigned by the chief administrative law judge as provided in section 2802 (relating to Tax Review Tribunal; establishment) shall preside over proceedings within the jurisdiction of the small claims division.

(c) Amounts in controversy.—If the taxpayer elects in its petition for review filed pursuant to Article XXVII (relating to procedure and administration) the small claims division shall have jurisdiction over any proceeding with respect to any calendar year for which the net amount of the tax deficiencies and claimed refunds in controversy does not exceed \$25,000, exclusive of interest and penalties.

(d) Jurisdiction.—If the taxpayer elects in its petition for review filed pursuant to Article XXVII and the department agrees in its answer to the taxpayer's petition, the small claims division shall have jurisdic-

tion over any proceeding regardless of the amount in controversy.

(e) Answer.—No later than 30 days after receipt of notice that the taxpayer has filed a petition in proper form or at other times as the tribunal may order, the department shall file with the tribunal an answer similar to that required by section 2807 (relating to pleadings).

(f) Withdrawal.—At any time prior to entry of judgment, a taxpayer may withdraw a proceeding in the small claims division by notifying the chief clerk of the tribunal in writing. A withdrawal shall be without prejudice and shall not have the effect of revoking the election to proceed in the small claims division.

(g) Hearings informal.—Hearings in the small claims division shall be informal, and the judge may receive evidence as the judge deems appropriate for determination of the case. Testimony shall be given under oath or affirmation.

(h) Time frame.—The presiding judge shall issue a final decision and order, including findings of fact and conclusions of law, within 90 days after the closing of the record.

(i) Record.—The record shall show the ruling on each finding of fact and conclusion of law. All decisions and orders are a part of the record and shall include a statement of:

(1) Findings and conclusions, and the reasons or basis for the findings and conclusions, on all material issues of fact, law or discretion presented on the record.

(2) The appropriate rule, order, relief or denial thereof.

(j) Decision final.—A final decision and order of the small claims division shall be conclusive upon all parties and may not be appealed. A decision and order of the small claims division shall not be considered as precedent in any other case, hearing or proceeding.

(k) Inapplicability.—Sections 2815 (relating to proposed decision; review by panel), 2818 (relating to representation), 2819 (relating to publication of decisions) and this section shall not apply to proceedings in the small claims division.

Section 2817. Appeals.

(a) Individual review.—The taxpayer or the department shall be entitled to judicial review of a final decision of the tribunal, except a final decision of the small claims division, in accordance with the procedure for judicial review of governmental determinations set forth in Pa.R.C.P. No. 1501 (relating to scope of chapter) through No. 1561 (relating to disposition of petition for review).

(b) Review of interlocutory decision.—The taxpayer or the department may obtain judicial review of an interlocutory decision of the tribunal by filing a petition as provided in Pa.R.A.P. Ch. 13 (relating to interlocutory appeals by petition).

(c) Record.—The record on judicial review shall include the decision and order of the tribunal, the stenographic transcript of the hearing before the tribunal, the pleadings, exhibits, documents and other items admitted into evidence.

Section 2818. Representation.

(a) Taxpayer.—Appearances in proceedings conducted by the tribunal may be by the taxpayer or by an attorney admitted to practice in this Commonwealth. Parties may also be represented by an attorney who is a member of or is employed by an accounting or other professional services firm, by an accountant licensed in this Commonwealth or by an enrolled agent authorized to practice before the Internal Revenue Service provided the representation does not constitute the unauthorized practice of law as determined by the Supreme Court of this Commonwealth.

(b) Department.—The department shall be represented by its authorized representative in all proceedings before the tribunal.

Section 2819. Publication of decisions.

Except for decisions issued by the small claims division, the chief clerk shall cause the final decisions of the tribunal to be indexed and published in print or electronic format as it deems best adapted for public convenience. Publications shall be made permanently available and constitute the official reports of the tribunal.

Section 2820. Service of process.

(a) Personal service.—The mailing by first class mail, postage prepaid, to the address of the taxpayer, as given on the taxpayer's petition, or to the address of the taxpayer's representative of record, if any, or to the usual place of business of the department, or its representative of record, shall constitute personal service on the other party. The tribunal may by rule prescribe that notice by other means shall constitute

personal service and may in any individual case order that notice be given to additional persons or by other means.

(b) Date.—Mailing by registered or certified mail and delivery by a private delivery service approved by the Internal Revenue Service in accordance with section 7502(f) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7502(f)), of any pleading, decision, order, notice or other document in respect to proceedings before the tribunal shall be deemed to have occurred on the date of mailing or the date of submission to the private delivery service.

Section 2821. Code of ethics.

(a) General rule.—The administrative law judges and the officers and employees of the tribunal shall conform to the following code of ethics. An administrative law judge, officer or employee of the tribunal must:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform all duties impartially and diligently.

(3) Not participate in any ex parte communications regarding matters before the tribunal.

(4) Abstain publicly from expressing, other than in public session, personal views on the merits of a matter pending before the tribunal.

(5) Observe the standards of fidelity and diligence that apply to the position of judge, officer or employee.

(6) Disqualify himself from proceedings in which impartiality might be reasonably questioned.

(7) Regulate extracurricular activities to minimize the risk of conflict with official duties. An administrative law judge, officer or employee of the tribunal may speak, write or lecture, and any reimbursed expenses, honoraria, royalties or other moneys received in connection therewith shall be disclosed annually. Disclosure statements shall be filed with the executive administrator of the tribunal and shall be open to public inspection during the normal business hours of the tribunal during the tenure of the administrative law judge, officer or employee.

(8) Conform to additional rules as the tribunal may prescribe.

(b) Ex parte communications.—Ex parte communications prohibited in this section shall mean any off-the-record communications to or by any administrative law judge, officer or employee of the tribunal regarding the merits or any fact in issue of any matter pending before the tribunal.

(c) Removal for violation.—An administrative law judge, officer or employee of the tribunal who violates the provisions of subsection (a) shall be subject to removal from office after notice and an opportunity to be heard.

(d) Construction.—Nothing in this act shall be interpreted to prohibit the administrative law judges, officers and employees of the tribunal from serving in the Pennsylvania National Guard and the reserves of the armed forces of the United States while appointed to or employed by the tribunal.

Section 2822. Rules and forms.

The tribunal is authorized to promulgate and adopt all reasonable rules, regulations and forms as may be necessary or appropriate to carry out the intent and purposes of this article.

Section 2823. Application of rules of administrative practice and procedure.

Except where inconsistent with this article and the rules and regulations adopted by the tribunal, the provisions of 2 Pa.C.S. (relating to administrative law and procedure) and the rules and regulations adopted under 2 Pa.C.S. are hereby incorporated by reference and shall apply to all actions and proceedings before the tribunal.

Section 30. Section 3003.1 of the act, amended May 7, 1997 (P.L.85, No.7) and June 29, 2002 (P.L.559, No.89), is amended to read:

[Section 3003.1. Petitions for Refunds.—(a) For a tax collected by the Department of Revenue, a taxpayer who has actually paid tax, interest or penalty to the Commonwealth or to an agent or licensee of the Commonwealth authorized to collect taxes may petition the Department of Revenue for refund or credit of the tax, interest or penalty. Except as otherwise provided by statute, a petition for refund must be made to the department within three years of actual payment of the tax, interest or penalty.

(b) The department may grant a refund or credit to a taxpayer for all tax periods covered by a departmental audit. If a credit is not granted by the department in the audit report, the taxpayer must file a petition for refund within six months of the mailing date of the notice of assessment, determination or settlement.

(d) In the case of amounts paid as a result of an assessment, determination, settlement or appraisal, a petition for refund must be filed with the department within six months of the mailing date of the notice of assessment, determination, settlement or appraisal.

(e) A taxpayer may petition the Board of Finance and Revenue to review the decision and order of the department on a petition for refund. The petition for review must be filed with the board within ninety days of the mailing date of a decision and order of the department upon a petition for refund.]

Section 31. Section 3003.2(b) and (i) of the act, amended June 29, 2002 (P.L.559, No.89) and December 23, 2003 (P.L.250, No.46), are amended to read:

Section 3003.2. Estimated Tax.—* * *

(b) The following words, terms and phrases when used in this section and section 3003.3 shall have the following meanings ascribed to them:

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

(2) "Estimated corporate net income tax." The amount which the corporation estimates as the amount of tax imposed by section 402 of Article IV for the taxable year.

(3) "Estimated capital stock and franchise tax." The amount which the corporation estimates as the amount of tax imposed by section 602 of Article VI for the taxable year.

(4) "Estimated mutual thrift institution tax." The amount which the institution estimates as the amount of tax imposed by section 1502 of Article XV for the taxable year.

(4.1) "Estimated insurance premiums tax." The amount which the insurance company estimates as the amount of tax imposed by section 902 of Article IX for the taxable year.

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

(4.3) "Person." Any natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth, its political subdivisions and instrumentalities and public authorities. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term "person," as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(4.4) "Safe harbor base year." The taxpayer's second preceding taxable year. If the second preceding taxable year is less than twelve months, then the "safe harbor base year" shall mean the taxpayer's annualized second preceding taxable year. If the taxpayer has filed only one previous report, the "safe harbor base year" shall mean the first preceding taxable year. If the first preceding taxable year is less than twelve months, then the "safe harbor base year" shall mean the taxpayer's annualized first preceding taxable year.

(4.5) "Estimated public utility realty surcharge." The amount which the taxpayer estimates as the amount of surcharge imposed by section 1111-A of Article XI-A for the taxable year.

(5) "Taxpayer." Any person required to pay a tax imposed by Article IV, VI, IX, XI or XV of this act.

(6) "Total tax." The total tax liability of the taxpayer for the tax period including the tax reported by the taxpayer and settled, resettled or assessed by the department.

* * *

(i) Whenever the amount shown as due on the annual report, including any [settlement] assessment of the [annual report] tax period, is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund, at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or at the initiative of

the department. If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon [settlement or resettlement] assessment, interest shall be calculated on the amount of the underpayment from the date credit was applied, assigned or refunded.

Section 32. Section 3003.3 of the act, amended May 7, 1997 (P.L.85, No.7) and December 23, 2003 (P.L.250, No.46), is amended to read:

Section 3003.3. Underpayment of Estimated Tax.—(a) In case of any underpayment of an installment of estimated tax by a taxpayer, there shall be imposed interest for the taxable year in an amount determined at the annual rate as provided by law upon the amount of the underpayment for the period of the underpayment, except that, in case of any substantial underpayment of estimated tax by a taxpayer, such interest for the taxable year shall be imposed in an amount determined at one hundred twenty per cent of the annual rate as provided by law upon the entire underpayment for the period of the substantial underpayment. For the purpose of this subsection, a substantial underpayment shall be deemed to exist for any period during which the amount of the underpayment equals or exceeds twenty-five per cent of the cumulative amount of installments of estimated tax which would be required to be paid if the estimated tax were equal to the amount as determined in subsection (b)(1).

(b) (1) For purposes of this section, the amount of the underpayment, if any, shall be the excess of:

(i) the cumulative amount of installments which would be required to be paid as of each installment date as defined in section 3003.2(c) if the estimated tax were equal to ninety per cent of the tax shown on the report for the taxable year, except that, if the [settled tax or, if the tax is resettled, the resettled] total tax exceeds the tax shown on the report by ten per cent or more, the amount of the underpayment shall be based on ninety per cent of the amount of [such settled or resettled] the total tax; over

(ii) the cumulative amount of installments paid on or before the last date prescribed for payment.

(2) If the [settled or resettled tax is used in calculating the amount of underpayment, the amount of tax as settled or resettled shall be utilized in determining] total tax is revised, the amount of underpayment shall be recalculated without the necessity of the filing of any petition by the department or by the taxpayer.

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid.

(d) Notwithstanding the provisions of the preceding subsections, other than as set forth in subsection (d.1), interest with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the safe harbor base year, adjusted for any changes to sections 401, 601, 602 and 1101 enacted for the taxable year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. Provided, that if the [settled] total tax for the safe harbor base year exceeds the tax shown on such report by ten per cent or more, the [settled] total tax adjusted to reflect the current tax rate shall be used for purposes of this subsection, [], except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any

petition by the department or by the taxpayer.] In the event that the [settled or resettled] total tax for the safe harbor base year exceeds the tax shown on the report by ten per cent or more, interest resulting from the utilization of such [settled or resettled] total tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of [such settlement or resettlement] each assessment, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to such [settled or resettled] total tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the [settled or resettled] total tax for the safe harbor base year, the tax will be reduced by multiplying it by the ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.

(d.1) (1) Notwithstanding the provisions of subsections (a), (b) and (c), interest with respect to any underpayment of any installment of estimated corporate net income tax for any tax year that begins in year 2008 or 2009 shall not be imposed if the total amount of all payments of estimated corporate net income tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax shown on the report of the taxpayer for the safe harbor base year, if a report showing a liability for tax was filed by the taxpayer for the safe harbor base year.

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

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

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

(d.2) (1) If there is a substantial underpayment, as defined in subsection (a), of any installment of estimated corporate net income tax or estimated capital stock/franchise tax for any taxable year beginning in 2008 or 2009, there shall be imposed additional interest in an amount determined at one hundred twenty per cent of the annual rate as provided by law upon the entire underpayment for the period of the substantial underpayment.

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

Section 33. Sections 3003.5(a) and 3003.6 of the act, added June 16, 1994 (P.L.279, No.48), are amended to read:

Section 3003.5. Refund Petitions.—(a) Effective January 1, 1995, petitions for refund of taxes, penalties, fines, additions and other moneys collected by the Department of Revenue except those claims for refunds of liquid fuels taxes paid by political subdivisions, farmers, nonpublic schools not operated for profit, volunteer fire companies, volunteer rescue squads, volunteer ambulance services, users of liquid fuel in propeller-driven aircraft or engines and agencies of the Federal Government and of the Commonwealth and the Boat Fund of the Pennsylvania Fish and Boat Commission shall be heard and determined by the Department of Revenue as provided in the act of April 9, 1929

(P.L.343, No.176), known as "The Fiscal Code," and the Department of Revenue shall thereafter have, except as set forth in Article XXVII, the powers and duties formerly granted to the Board of Finance and Revenue with respect to such refunds. Also effective January 1, 1995, the Board of Finance and Revenue shall no longer have the power and duty to hear and determine any petition for refund of taxes, penalties, fines, additions or other moneys collected by the Department of Revenue, except that thereafter the board may either hear and determine any such petitions filed with it prior to January 1, 1995, or it may transfer such petitions to the Department of Revenue.

Section 3003.6. Timely Filing.—A taxpayer shall be deemed to have timely filed a [petition for resettlement, a] petition for reassessment[, a petition for redetermination] or any other protest relating to the assessment of tax or any other matter relating to any tax imposed by this act if the letter transmitting the petition is received by the Department of Revenue or is postmarked by the United States Postal Service on or prior to the final day on which the petition is required to be filed.

Section 34. The act is amended by adding a section to read:

Section 3003.18. Assessments to be Made by Department of Revenue.—(a) Parts IV, V, VI and VII of Article IV shall apply to:

(1) The tax imposed by the act of May 23, 1945 (P.L.893, No.360), known as the "Co-operative Agricultural Association Corporate Net Income Tax Act." The reference to petition for resettlement in section 4 of the "Co-operative Agricultural Association Corporate Net Income Tax Act" shall be interpreted as petition for reassessment.

(2) The State admissions tax and the pari-mutuel wagering tax imposed by sections 208 and 222 of the act of December 17, 1981 (P.L.435, No.135), known as the "Race Horse Industry Reform Act."

(3) All taxes, fees, additions, bonuses, costs, penalties or charges collected by the Department of Revenue either:

(i) subject to settlement or determination by the Department of Revenue prior to the effective date of this section; or

(ii) for which no other method for the establishment of the unpaid or unreported liability to be collected by the department is provided by law.

(b) The powers conferred upon the Department of Revenue by this section shall be in addition to, but not exclusive of, any powers heretofore or hereafter conferred upon the department by law.

(c) This section shall not apply to the following:

(1) The procedure for collection of moneys due the Commonwealth by county or city officers as provided by Article IX of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

(2) The taxes imposed by 75 Pa.C.S. Chs. 90 (relating to liquid fuels and fuels tax), 95 (relating to taxes for highway maintenance and construction) and 96 (relating to motor carriers road tax).

Section 35. (a) Sections 6, 7, 8 and 9 of the act of May 23, 1945 (P.L.893, No.360), known as the Co-operative Agricultural Association Corporate Net Income Tax Act, are repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 36. This act shall apply as follows:

(1) The addition of Articles XXVII and XXVIII of the act shall apply to all decisions and orders of the Department of Revenue mailed after December 31, 2007, regarding a petition for reassessment, redetermination, resettlement or refund.

(2) The amendment or addition of the following provisions shall apply to taxable years beginning after December 31, 2007:

- (i) Section 401(3)1(a) and (b), 2 and 4(c)(5), (7), (8), (9), (10), (11) and (12) of the act.
- (ii) Section 402(b) of the act.
- (iii) Section 403 of the act.
- (iv) Section 406 of the act.
- (v) Section 407.1 of the act.
- (vi) Section 407.2 of the act.
- (vii) Section 407.3 of the act.
- (viii) Section 407.4 of the act.
- (ix) Section 408(b) of the act.
- (x) Section 408.1 of the act.
- (xi) Section 408.2 of the act.
- (xii) Section 1101(e) of the act.

(xiii) Section 1502(f) of the act.

(xiv) Section 3003.2(b) and (i) of the act.

(xv) Section 3003.3 of the act.

(xvi) Section 3003.6 of the act.

(xvii) Section 3003.18 of the act.

(3) The repeal under section 35(a) of this act shall apply to taxable years beginning on or after January 1, 2007.

Section 37. This act shall take effect as follows:

(1) The amendment, addition or repeal of the following provisions shall take effect January 1, 2007:

(i) Section 230 of the act.

(ii) Section 232 of the act.

(iii) Section 234 of the act.

(iv) Section 247.1 of the act.

(v) Section 250 of the act.

(vi) Section 251 of the act.

(vii) Section 252 of the act.

(viii) Section 253 of the act.

(ix) Section 254 of the act.

(x) Section 256 of the act.

(xi) Section 338 of the act.

(xii) Section 339 of the act.

(xiii) Section 340 of the act.

(xiv) Section 341 of the act.

(xv) Section 350 of the act.

(xvi) Section 1111-C of the act.

(xvii) Section 1112-C of the act.

(xviii) Section 1113-C of the act.

(xix) Section 2005 of the act.

(xx) Section 2009 of the act.

(xxi) Section 2181 of the act.

(xxii) Article XXVII of the act.

(xxiii) Article XXVIII of the act.

(xxiv) Section 3003.1 of the act.

(xxv) Section 3003.5 of the act.

(xxvi) Section 35(a) of this act.

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

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, what this amendment does is basically put forth the Governor's tax plan proposal, which was reached through the Business Tax Reform Commission. It lowers the corporate net income tax from its current 9.99 percent to 7.99 percent. That is a 20-percent decrease, and it would now be at a level lower than it has been in 36 years. It also removes the \$2 million limit on the yearly usage of the net operating loss carryforward. It increases the sales factor in the apportionment formula for the CNI to 100 percent, and it also makes the proposal revenue neutral to the Commonwealth by requiring multi-State corporations to file consolidated tax returns. This would close the so-called Delaware holding company loophole.

Madam President, this is a revenue-neutral bill which is pro-business and pro all business. It is not just pro those businesses that have found the loophole and went to Delaware to set up holding companies. This takes care of small corporations, mom-and-pop corporations that are not sophisticated and cannot afford to do the tax accounting and the other problems with trying to set a Delaware holding company. It lowers the CNI for every corporation, not just the biggest in Pennsylvania who have been ducking the tax. One of the problems with the CNI in Penn-

sylvania is that nobody pays it except the little guy with a corporation. All we want to do is lower that substantially, lower it to where it has not been in 36 years, but we want everybody to pay it. We do not want tax dodgers to be rewarded for going to other States to set up phony holding companies. That is all this is about. This is tax equity for every corporation in Pennsylvania. We know that the big guys have well-paid lobbyists up here doing their thing to let them protect their loophole, but their loophole is unconscionable, it is unfair to smaller corporations, it is unfair to all Pennsylvanians in general.

So this is a revenue-neutral bill that comes out of the Business Tax Reform Commission, which was not set upon by a bunch of labor leaders, it was business leaders who came together and decided they had to find an equitable way to address corporate taxation in Pennsylvania so that we can have job growth, but with fairness. This is tax neutral, it is revenue neutral, so that the Members of this body who support the amendment, that we do not increase our budget by any more than inflation, will be able to do that with this amendment and not send the budget out of whack before we even get to it. So I ask for an affirmative vote, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, I rise in opposition to the gentleman's amendment. The gentleman said repeatedly that the bill is revenue neutral. His amendment is revenue neutral, but the bill is not revenue neutral, and I would like to explain why it is not. It is a tax-cut bill, and if the amendment is adopted, it will be a revenue-neutral bill. So, in essence, if you vote for this amendment, you are voting against tax cuts. Now, let me explain what tax cuts you are going to be voting against if you vote for this amendment. There are four major provisions in this tax-cut bill which would be abrogated by the gentleman's amendment.

The first is a reduction of the CNI, the Corporate Net Income tax rate from the current 9.9 percent to 9.59 percent. That tax rate currently is the highest in the nation. It is still too high at the rate we are lowering it to, but at least we are making progress in the right direction. That will go into effect on January 1, 2007.

The second provision in this bill is an increase in the cap on the net operating loss carryforward from the current \$2 million to initially \$7.5 million, and ultimately, on January 1, 2007, and thereafter, \$20 million. For corporations who have losses but cannot use those losses to deduct against income, they will be able to do that to a greater extent in the years that this bill applies to.

Thirdly, Madam President, one of my favorite provisions of this bill is a change in what we call the sales factor. The current law in Pennsylvania requires a company to calculate its corporate net income tax based on three factors. Factor number one is sales in Pennsylvania, which is 60 percent of the formula. Factor number two is its payroll in Pennsylvania, the people whom they employ, and that is 20 percent of the formula. The third factor is the value of the property that they own in Pennsylvania, such as their plants, their stores, et cetera. That is also 20 percent of the formula. In essence, Madam President, to some degree, 20 percent and 20 percent, we are punishing Pennsylvania businesses who have Pennsylvanians working for them and who have Pennsylvania property in which they invest. This bill, as it is presently

written, will change that sales factor from the current 60-20-20 to ultimately 95-5.

Finally, Madam President, and probably most important, this bill reduces the personal income tax for all Pennsylvania wage earners. It reduces it from the current 3.07 percent beginning on January 1, 2007, it goes down to 3.03 percent, and then to 2.98 percent beginning January 1, 2008. If we were to adopt the gentleman's amendment, that personal income tax cut would be eliminated from this bill, and that would be a shame for all Pennsylvanians.

Now, Madam President, the gentleman referred to the Governor's Tax Reform Commission, and I agree with the gentleman that the people whom he appointed to that commission and whom other Members of the legislature appointed to that commission were good people, and they came up with some good ideas. In fact, the gentleman has incorporated one or two of those good ideas into his amendment. But as I told the Governor, and as I have said repeatedly over the last couple of years since that commission was appointed, it had a fatal flaw because in the charge to the commission, the Governor said that whatever they came up with, they had to be revenue neutral. What that means is, Madam President, whatever recommendations they make, some people's taxes are going to go up and some people's taxes are going to go down, and it is going to be a wash for the State of Pennsylvania. That is not the only problem with Pennsylvania business taxes. The problem with Pennsylvania's taxes on job creators is that they are too high in the aggregate, and we have to lower the cost of doing business for everybody in Pennsylvania if we are going to increase their capacity to create jobs, which is what they are all about.

This amendment that the gentleman has offered is, as he says, revenue neutral, but it should not be revenue neutral. It should cut taxes, not keep them the same. Therefore, Madam President, I urge that this amendment be defeated.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, I did not mean to get into the bill, but I will since the gentleman has raised the issue. This is a revenue-neutral bill for one reason: we are attempting to get the tax dodgers who have set up Delaware holding companies to avoid paying Pennsylvania taxes to pay their fair share. Those corporations, by and large, are the huge corporations in Pennsylvania with the special lobbyists who come up here and get their tax favors, so that is why it is revenue neutral.

As far as what got cut, we cut the same things that the gentleman talks about, but we cut them by a bigger degree. He cuts the CNI by four-tenths of 1 percent. We cut it by 2 percent. Twenty percent we cut it, something that has not been done in 36 years. But like responsible people, and you might even refer to us as conservatives on this issue, we tried to do things without wasting money. We tried to make them revenue neutral. We are not up here spending billions of dollars out of both sides of our mouth. We are saying, yes, we should deal with the problem of CNI, but we are not going to give another break to the tax dodgers who avoid paying Pennsylvania taxes. That is the difference.

As far as the personal income tax, here again we speak out of both sides of our mouth sometimes. This bill, House Bill No. 515, lowers business taxes in 2006-07 by \$363 million, and then

the personal income tax gets lowered by \$55 million. Not a big deal. Then in 2007-08, the businesses get a tax reduction of \$1.114 billion, and they are trying to ride that on the back of a PIT cut that only yields \$136 million. What this bill does without this amendment is give a huge chunk of money to big business and a few crumbs from the table to people who work in Pennsylvania. It is a big business bill, it is a bill that is abhorrent to me in this time of fairness and equity, and ours is revenue neutral again because we go after the tax dodgers. The Senator from Dauphin County wants to protect them. That is his job. I am here about fairness and equity. I am not running for Governor. I want to make sure that every corporation in Pennsylvania that does business in Pennsylvania pays the Pennsylvania tax. What could be more simple than that? Do not give me mumbo-jumbo about percentages and all that other nonsense. That is all this is about, getting the tax dodgers to pay their fair share. That is what this amendment does. House Bill No. 515 rewards the tax dodgers and cons you by saying we gave a few crumbs to people with the personal income tax. It is outrageous in today's time of alleged transparency that that side of the aisle wants to continue to protect tax dodgers who continue to do Delaware holding companies.

Madam President, I was made aware of the Delaware holding company position at my bank when some smart accountants came to me and said, why are you as a Pennsylvania bank paying the corporate net income tax? All we have to do is set up a Delaware holding company, and we do not have to pay that anymore. I rejected that because it was unfair. I did not want my corporation where I am the chairman of the bank board to be a tax dodger. Now, maybe that is because I am a State Senator, and maybe if we had some State Senators in here who were the heads of these corporations, they would be embarrassed to be tax dodgers, but I will be damned if I am going to continue to protect them, and I think it is a shame on them if they want to do that. It is the biggest loophole that was ever created, and it was created by the special interests. It is costing us a fortune, and now they want to try to do something to make it even worse. I urge an affirmative vote on the amendment.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentlewoman from Venango, Senator Mary Jo White.

Senator M.J. WHITE. Madam President, I rise to speak to the amendment, not to the entire bill, which I think I should have been allowed to do before that tirade.

With regard to the Business Tax Reform Commission, which the gentleman mentioned several times, I believe a correction for the record is in order. This is not the endorsed position of the Business Tax Reform Commission. They were given the job of coming up with a revenue-neutral bill, and my recollection of the recommendations of that commission was that their package of recommendations must be taken as a whole, that if any piece of it was removed, it was not their recommended package. So, to make it clear for the record, this is not the position of the Business Tax Reform Commission, it is part of it, and they were explicit in saying that it was all or nothing with regard to having their recommendation or endorsement.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Wozniak.

Senator WOZNIAK. Madam President, it has been a hectic week here in Bedlam, and what we are attempting to do here today is create a better business climate, and this is the Governor's proposal, and I remember when they were trying to put this task force together to create a better business climate in Pennsylvania. I think most people understand I am a pretty moderate Democrat and pretty pro-business when it comes many issues. This issue has been cherry-picked to death. The revenue-neutral concept was a reason to try to make the tax burden fairer across our business community. In a few short months, the Governor is going to give his State of the State Address and his Budget Address. We will be better prepared to understand how much money is in our budget and how much we can reduce things.

What this amendment does is begins the process of making our business taxes fairer in Pennsylvania. As was said by the gentleman from Philadelphia, it deals with the people who were able to slide behind the law, and of course that means they will be paying more taxes, but for many, many businesses in Pennsylvania, they are going to see a tax reduction if this amendment passes. If we can go further when we find out where our fiscal situation is in February, I will certainly be happy to do that. But right now is not the time to sit here and play political pandering and say, let us start reducing taxes by \$400 million or \$500 million, when we are not really in a position to make that determination at this time.

Let us support this amendment, and then let us see where we are at in February, because folks, that is only a few short months away.

We are right in the middle of another issue when we talk about reducing personal income tax. We are talking about potentially restructuring property taxes in Pennsylvania, so I do not want to be taking with one hand and giving with the other, or going in the back pockets of both constituencies and coming up with something else. Let us be fair, let us be honest, let us step forward, three steps forward, two steps back, and let us take the reduction of business taxes step by step by step, so finally over the long run, we make Pennsylvania a competitor in the nation and a competitor in the world.

Thank you very much.

The PRESIDENT. The Chair recognizes the gentleman from Dauphin, Senator Piccola.

Senator PICCOLA. Madam President, the maker of the amendment, in his second address, referred repeatedly to tax dodgers and a Delaware loophole, and the inference with that kind of rhetoric is that there is something illicit, improper, or illegal going on with respect to Pennsylvania taxpayers who happen to be corporations. What the gentleman is referring to is something called combined reporting. It is perfectly legal for Pennsylvania corporations to do what they are doing now vis-a-vis Delaware corporations. In fact, because Pennsylvania has the highest corporate net income tax in the country, and because Pennsylvania also levies a capital stock and franchise tax, the only State that levies both, we are at a disadvantage. Pennsylvania corporations are at a disadvantage when it comes to taxes vis-a-vis other States, so you can understand why companies do not want to come into Pennsylvania, you can understand why

they do not want to create jobs in Pennsylvania, you can understand why companies that are already here in Pennsylvania do not want to expand, and perhaps they are going to leave, because we tax them too much. The one little thing that we give them an advantage on is this combined reporting, or Delaware holding company provision, and it is not a tax dodge. It is not an illicit tax procedure, it is lawful tax planning.

Now, other States have started to go down the road toward this so-called combined reporting, and the experience of the other States has not been good. They are reversing themselves and coming back to where Pennsylvania already is. It is an uncertain path to go down. It is fraught with costs and litigation, and it is not something that Pennsylvania should be considering now when we have the highest tax rates for job creators of any State in the country. So, Madam President, I repeat, the adoption of this amendment will eliminate the tax cuts, both corporate as well as personal, that are contained in this bill, and that, and that alone, should merit a negative vote.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Cambria, Senator Wozniak.

Senator WOZNIAK. Madam President, legal does not always make it right. Many times businesses and individuals hide behind the law and say, well, it is okay because the law says it is okay. Law, ethics, what in your guts is right might not always coincide. What we are trying to do is reduce the CNI for all of our corporations and make sure that those that have used the law no longer will be able to use that particular law. We are reducing almost fully 2 percent of the CNI. We are eliminating the net operating loss, and this is something that manufacturing in Pennsylvania has been adamant about. I think this body and the House has shown time and time again that it has kept its commitment to a slow, steady elimination of the capital stock and franchise tax. What we are trying to do once again is keep something revenue neutral, make it fairer on our businesses, show that Pennsylvania is moving forward, and that we have the ear of the business community and we want to make a better climate.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, on the amendment, I am concerned that if we do not approve this amendment, we will in fact create a windfall opportunity, and I just frankly ask, where is the sense of fairness and fair play? We have yet to take up any serious debate or discussion on a meaningful increase in the State minimum wage, and we are about to basically take stock and pass a measure which will raid and basically rob the State Treasury of upwards of \$4 million or \$5 million over the next 4 or 5 years. So where is the sense of fairness and economic justice in terms of being fair both to business and those at the bottom rung of the economic ladder in our Commonwealth?

I do not oppose necessarily some limited approach toward enhancing business tax revenue. We have done that on a few occasions in the past couple of years, but I do take exception to this wholesale attack on this revenue, its significant loss, the point that Senator Fumo rightfully makes about the Delaware holding company clause. I think it is somewhat negligent at this point to look at a significant loss of revenue to State coffers at a

time when we still have significant shortfalls in basic operating costs to manage the affairs of the public and our obligations to provide a quality of life for the residents and constituents here in Pennsylvania. So I would strongly ask that we please be considerate and vote for this amendment. It is fair play, it is economic justice, it is a reasonable and a prudent approach toward some meaningful business tax relief, but it does not shoot a hole into the State budget.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Lehigh, Senator Browne.

Senator BROWNE. Madam President, in regard to much of the discussion on the amendment concerning the Delaware company loophole, there has been much debate on this over the last several years, and much of the debate has been the contention that this is purely a tax dodge, that companies do this for tax reasons only, and most of the time when companies are making decisions, taxes are a minimal consideration. There are other major business decisions that companies make when doing this, and this is an example: The major reason companies set up these Delaware holding companies is to appropriately take care of their shareholders, to protect their proprietary assets. Delaware has hundreds of years with its surety court and has a history of being the best State, and actually the best jurisdiction in the entire world, for protecting a company's proprietary assets. So what large companies in the Lehigh Valley and companies out in the western section of the State do is take their copyrights and trademarks and put them in a place where they are going to be safe.

The bottom line is, our climate in Pennsylvania for protecting these assets is not as good as Delaware's. We should be working on these issues to make sure that companies have a reason to have these assets here, and not from a business decision to put them in other States and give revenue to them because we do not deserve it. This has been coined as a loophole. There are companies that have given this plan a bad name because they have not set up companies that are real. In the Department of Revenue right now, if a company abuses this structure, it can disallow the corporation as it stands. We do not need a new law for them to do that, but the reason it is there is that we want to make sure that companies can protect their proprietary assets from frivolous lawsuits.

This amendment does not recognize that fact, and most companies in Pennsylvania are doing business the right way and are trying to serve their employers and shareholders in the best possible way in terms of their line of business and the assets they need to protect. So, when we talk about this provision, let us make sure we understand what it really is, a provision that companies use to make wise business decisions and not avoid taxes.

Thank you, Madam President.

And the question recurring,

Will the Senate agree to the amendment?

The yeas and nays were required by Senator FUMO and were as follows, viz:

YEA-20

Boscola	Hughes	Mellow	Tartaglione
Costa	Kasunic	Musto	Washington
Ferlo	Kitchen	O'Pake	Williams, Anthony H.
Fontana	LaValle	Stack	Williams, Constance
Fumo	Logan	Stout	Wozniak

NAY-30

Armstrong	Greenleaf	Punt	Vance
Brightbill	Jubelirer	Rafferty	Waugh
Browne	Lemmond	Regola	Wenger
Conti	Madigan	Rhoades	White, Donald
Corman	Orie	Robbins	White, Mary Jo
Earll	Piccola	Scarnati	Wonderling
Erickson	Pileggi	Thompson	
Gordner	Pippy	Tomlinson	

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

And the question recurring,
Will the Senate agree to the bill on third consideration?

It was agreed to.

And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-31

Armstrong	Gordner	Pippy	Tomlinson
Boscola	Greenleaf	Punt	Vance
Brightbill	Jubelirer	Rafferty	Waugh
Browne	Lemmond	Regola	Wenger
Conti	Madigan	Rhoades	White, Donald
Corman	Orie	Robbins	White, Mary Jo
Earll	Piccola	Scarnati	Wonderling
Erickson	Pileggi	Thompson	

NAY-19

Costa	Kasunic	Musto	Washington
Ferlo	Kitchen	O'Pake	Williams, Anthony H.
Fontana	LaValle	Stack	Williams, Constance
Fumo	Logan	Stout	Wozniak
Hughes	Mellow	Tartaglione	

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

SB 384 CALLED UP

SB 384 (Pr. No. 1285) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from

page 2 of the Third Consideration Calendar, by Senator PICCOLA.

BILL AMENDED

SB 384 (Pr. No. 1285) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for definitions and for administrative duties of board.

On the question,
Will the Senate agree to the bill on third consideration?
Senator PICCOLA offered the following amendment No. A4069:

Amend Sec. 2 (Sec. 8502), page 2, line 23, by striking out "and" and inserting: or

Amend Sec. 2 (Sec. 8502), page 2, lines 24 and 25, by striking out "information from the member records" and inserting: receive from the board, members' names and home addresses

Amend Sec. 2 (Sec. 8502), page 2, line 27, by inserting after "all": other

Amend Sec. 2 (Sec. 8502), page 2, line 29, by inserting after "Law,": and that is available in electronic form

Amend Sec. 2 (Sec. 8502), page 3, line 7, by inserting after "DIS-CLOSURE": of information pursuant to this subsection

Amend Sec. 2 (Sec. 8502), page 3, line 10, by inserting after "ASSOCIATION": pursuant to this subsection

Amend Sec. 2 (Sec. 8502), page 3, line 11, by striking out "THEIR" and inserting: the

Amend Sec. 2 (Sec. 8502), page 3, line 12, by striking out "ALL NEW MEMBERS" and inserting: each new member

Amend Sec. 2 (Sec. 8502), page 3, line 13, by inserting after "DIS-CLOSURE" where it appears the first time: pursuant to this subsection

Amend Sec. 2 (Sec. 8502), page 3, line 14, by inserting after "PRO-CESSING": of

Amend Sec. 2 (Sec. 8502), page 3, lines 22 and 23, by striking out "on the first of each month, provided each" and inserting: by the tenth day of each month for the preceding month unless the association shall consent to a less frequent schedule for production and transmittal of such information, provided the

Amend Sec. 2 (Sec. 8502), page 3, line 23, by striking out "and" and inserting: or

Amend Sec. 2 (Sec. 8502), page 3, line 28, by striking out "and" and inserting: or

Amend Sec. 2 (Sec. 8502), page 3, line 29, by striking out "paragraph" and inserting: subsection

Amend Sec. 2 (Sec. 8502), page 4, line 4, by inserting after "information": for any individual member

Amend Sec. 2 (Sec. 8502), page 4, line 17, by striking out "and" and inserting: or

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

It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator PICCOLA.

HB 603 CALLED UP

HB 603 (Pr. No. 676) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 2 of the Third Consideration Calendar, by Senator PICCOLA.

BILL RECOMMITTED

HB 603 (Pr. No. 676) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 71 (State Government) of the Pennsylvania Consolidated Statutes, further defining "enforcement officer" to include certain Pennsylvania Game Commission employees.

Upon motion of Senator PICCOLA, and agreed to by voice vote, the bill was recommitted to the Committee on Appropriations.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, we have two bills that are being reprinted with Supplemental Calendars, and we expect to run both of those. We are told that they should be ready in about 30 minutes. So at this point, Madam President, I ask for a recess of the Senate, and I estimate that it will take about 20 to 30 minutes, so the Members should stay close by so that we can come back and finish our work.

The PRESIDENT. Without objection, we will recess for one-half hour.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 3**

**BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE**

HB 1539 (Pr. No. 3052) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, providing for public official compensation; further providing for reports to the Secretary of Revenue; establishing and providing for appropriation to the Emergency Energy Assistance Fund; and making a repeal related to public official compensation.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Ferlo.

Senator FERLO. Madam President, in the interest of time and probably more appropriately some level of unity and good grace here, I will be brief. I think it is important, though, that we reflect on one particular issue. I think, obviously, everybody knows by

now what this bill is, and I am pleased to see that it is moving forward. Late last year when this first came up as an inkling, I raised an objection in caucus and publically was quoted as referring to any notion of a pay raise as inequitable, unjustified, and morally reprehensible. I felt that way a year and a half ago, and quite honestly, I still feel that way. I am not going to belabor the point now, because I did have an hour-long speech, and fortunately given the day's events and various discussions that have taken place in various caucuses and in levels of government that I am not sure I will get behind the doors of, I will whittle my comments down to just a couple brief observations.

The folks who are really responsible for the action today are probably none of us in this room. I think it is important that we sincerely, and we may not be able to take the time today to do this, but at some point appropriately we need to engage in what can be termed as the need to repent, repeal, and reform. Today we are at least moving forward on the repeal, but I hope that we will not cut short our need to look seriously at reforms to our own institutions.

I will not go into a lengthy commentary on many of the e-mails and points of concern and views that have been expressed by hundreds of people in my district, and certainly thousands of folks around the Commonwealth, but I believe very strongly that we are here today with what I hope will be overwhelming support for this measure, because of what I would characterize as creative and principled protest that has gone on since the late evening vote of July 7. If it were not for individuals getting up and speaking their minds very clearly, very strenuously in all corners of this Commonwealth, there would not be this sense of urgency for this legislative body to act in the appropriate manner, and I hope and pray we are about to act.

So I just want to point out and say thank you to those folks who may not get recognized today in this Chamber, but they are the many thousands of Pennsylvanians who rightfully were indignant and have expressed their views strenuously. I hope they will be mindful that there is a need for corrective action, and at times when voices are heard and heard loudly, and they are articulate voices and strident voices and voices of fairness and justice, there is a remedy. I hope and pray that remedy is about to happen in a majority vote for the amended piece of legislation.

Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentlewoman from Northampton, Senator Boscola.

Senator BOSCOLA. Madam President, I want to follow up on something Senator Ferlo said. When we did this in July, I voted against the pay raise and I did not take it, and I see now that we are doing the right thing here in the Senate, and I want to congratulate my colleagues on both sides of the aisle for doing the right thing and repealing this pay raise.

Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Fayette, Senator Kasunic.

Senator KASUNIC. Madam President, today's action reaffirms that democracy does work. Today's vote is proof of how an active and engaged public can make a difference. Today's action is not about who voted for what back when, today's vote is about respecting the public and adhering to our role as Senators for the people whom we represent throughout Pennsylvania. Today's

roll-back action is a victory for the people, a victory for the American democratic process, and a victory for those of us who truly believe we represent the people we serve.

Madam President, hopefully today's act will usher in a new era of open government and an open process that will discourage stealth politics and political movers in the late night. Hopefully, with this divisive and controversial issue finally behind us, we can now begin buckling down on crucial issues such as tax relief and health care reform that will be affordable to all Pennsylvanians.

Madam President, democracy does work. Today's action serves as a stellar example of what an active and involved public can accomplish.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same with amendments in which concurrence of the House is requested.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 4**

**BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE**

SB 384 (Pr. No. 1320) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for definitions and for administrative duties of board.

Considered the third time and agreed to,
And the amendments made thereto having been printed as required by the Constitution,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

**UNFINISHED BUSINESS
SENATE RESOLUTION ADOPTED**

Senators RAFFERTY, BRIGHTBILL, ARMSTRONG, BOSCOLA, BROWNE, CONTI, CORMAN, COSTA, EARLL, ERICKSON, FERLO, FONTANA, FUMO, GORDNER, GREENLEAF, HUGHES, JUBELIRER, KASUNIC, KITCHEN, LaVALLE, LEMMOND, LOGAN, MADIGAN, MELLOW, MUSTO, O'PAKE, ORIE, PICCOLA, PILEGGI, PIPPY, PUNT, REGOLA, RHOADES, ROBBINS, SCARNATI, STACK, STOUT, TARTAGLIONE, THOMPSON, TOMLINSON, VANCE, WASHINGTON, WAUGH, WENGER, D. WHITE, M.J. WHITE, A. WILLIAMS, C. WILLIAMS, WONDERLING and WOZNIAK, by unanimous consent, offered **Senate Resolution No. 199**, entitled:

A Resolution recognizing November 2005 as "Smith-Lemli-Opitz Syndrome Awareness Month" in Pennsylvania.

On the question,
Will the Senate adopt the resolution?

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Rafferty.

Senator RAFFERTY. Madam President, Smith-Lemli-Opitz/RSH Syndrome is a genetic disorder that affects the development of children before and after their birth. Almost all children with this disorder are born with small brains and have various degrees of slow development and mental retardation, and independent living as an adult is most unlikely. Although not all children with this disorder learn to walk and talk, many acquire good language ability and can learn skills. Their lifespans can be limited by serious internal malformations, but with good nutrition

and medical care, a normal lifespan is possible for them. Much progress has been made in this area, Madam President, but much yet has to be done, and it is important for us to recognize this disorder and those children affected by it.

If I may, Madam President, one of our own extended family members in the Senate of Pennsylvania, Andrew DiNunzio, his little angel, Angela Mary Jane DiNunzio, has this disorder. To Andy and his wife, Amy, our best wishes and regards, and to little Angela, our prayers and hopes.

I ask the Members of the Senate to vote unanimously for this resolution.

Thank you, Madam President.

And the question recurring,

Will the Senate adopt the resolution?

A voice vote having been taken, the question was determined in the affirmative.

CONGRATULATORY RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Congratulations of the Senate were extended to Mr. and Mrs. Robert Weaver, Mr. and Mrs. Robert Welk, E. Leonard Ferber, Jr., and to Hudson T. VanOmer by Senator Armstrong.

Congratulations of the Senate were extended to Kermit LaBar by Senator Boscola.

Congratulations of the Senate were extended to John H. Schrack by Senator Brightbill.

Congratulations of the Senate were extended to William A. Erdman, Prudential Benjamin Real Estate of Slatington and to WFMZ Television/MBC Teleproductions of Allentown by Senator Browne and others.

Congratulations of the Senate were extended to Geoffrey Ian Finnegan, John Robert Gardner, Dave Worthington and to Thomas Michael Kane by Senator Conti.

Congratulations of the Senate were extended to the Honorable Frank J. Montemuro, Jr., by Senators Conti and Jubelirer.

Congratulations of the Senate were extended to Mr. and Mrs. Nevin L. Grove, Johanna Wagner Kaseberg and to the Penns Valley Kiwanis Club by Senator Corman.

Congratulations of the Senate were extended to Vincent Schiarelli by Senator Costa.

Congratulations of the Senate were extended to the Pittsburgh Commission on Human Relations by Senator Ferlo.

Congratulations of the Senate were extended to Dr. Richard E. Deitrick, Gerald Thomas Soroko, Jr., Weston David Campbell, Martha Lenker, Anastasia Watral and to Anthony Sedor by Senator Gordner.

Congratulations of the Senate were extended to Thomas J. Timoney and to the School District of Upper Moreland Township by Senator Greenleaf.

Congratulations of the Senate were extended to Blane Joseph Newberry by Senator Hughes.

Congratulations of the Senate were extended to the Honorable Patricia S. Stoner and to the Family Resource Center of Blair County by Senator Jubelirer.

Congratulations of the Senate were extended to the Leham-Idetown United Methodist Church of Leham by Senator

Lemmond.

Congratulations of the Senate were extended to the Turtle Creek Police Department by Senator Logan.

Congratulations of the Senate were extended to Mr. and Mrs. James V. Proof, Mr. and Mrs. Thomas Davison, Mr. and Mrs. H. Foster Hugo, Mr. and Mrs. Donald Sherman, Sr., Mr. and Mrs. Delbert Eugene Kline, Mr. and Mrs. Kenneth B. Buttorff, Mr. and Mrs. James A. Breining, Mr. and Mrs. Philip Swartz, Michael Travis VanDeMark, Nicholas Richard Snyder, Thad Wesley Slocum and to Clayton Marshall Stevens by Senator Madigan.

Congratulations of the Senate were extended to Mr. and Mrs. William Clancy, Mr. and Mrs. Frank J. Kielar, Jr., Chapter 11 of the Disabled American Veterans in Dickson City and to Luzerne Intermediate Unit No. 18 of Kingston by Senator Mellow.

Congratulations of the Senate were extended to Luzerne Intermediate Unit No. 18 of Kingston by Senators Mellow and Musto.

Congratulations of the Senate were extended to Biagio William Sciacca, Jr., James Drogalis, Mary Gardner Maier and to Justin Consagra by Senator Musto.

Congratulations of the Senate were extended to Ronald E. Bush III, William P. Kish, Alex J. Seidel, James E. Berret, Daniel J. Gallo, Christopher S. Hibbard, Erik R. Eddy, Richard B. Delp, Pennsylvania Association of Student Councils and the Fleetwood High School Student Government Association and to the Topton American Legion Ladies Auxiliary Unit 217 by Senator O'Pake.

Congratulations of the Senate were extended to Mr. and Mrs. Ed McKee and to the Reverend Joseph Newell by Senator Orié.

Congratulations of the Senate were extended to the Reverend and Mrs. James R. Jones by Senator Pileggi.

Congratulations of the Senate were extended to the Eagle Tavern and Inn of Uwchland and to the Shannondell United States Marine Corps Association of Audubon by Senator Rafferty.

Congratulations of the Senate were extended to Albert W. Eastburn by Senators Rafferty and Thompson.

Congratulations of the Senate were extended to Tiffany Okel, Danielle Cole and to Lauren Steiner by Senator Regola.

Congratulations of the Senate were extended to Dr. John C. Dethoff, Dr. Michael D. Perilstein and to Ramona Turner Turpin by Senator Rhoades.

Congratulations of the Senate were extended to Shawn Yochum, Gary Stamp, Susan E. Tau, William G. Perrine, Blair P. McCurdy and to Titusville Dairy Products by Senator Robbins.

Congratulations of the Senate were extended to Mr. and Mrs. Donald J. Crawford and to Mr. and Mrs. Richard L. Diesel by Senator Stout.

Congratulations of the Senate were extended to Tom Day and to Daniel Anthony Suraci by Senator Thompson.

Congratulations of the Senate were extended to Main Line Health/Paoli Hospital of Bryn Mawr by Senators Thompson and C. Williams.

Congratulations of the Senate were extended to Thomas H. McIntyre, George Ruggeri, sanofi-aventis of Malvern and to Centocor of Malvern by Senator Thompson and others.

Congratulations of the Senate were extended to Bensalem Emergency Medical Service and to the Bristol Borough School District by Senator Tomlinson.

Congratulations of the Senate were extended to Rachel Callahan and to Univest National Bank and Trust Company of Souderton by Senators Tomlinson and Conti.

Congratulations of the Senate were extended to Mr. and Mrs. Thomas R. Helman, Mr. and Mrs. Ken McPherson, Paul Daft and to the Soroptimist International of the West Shore by Senator Vance.

Congratulations of the Senate were extended to Janie Parham Felder by Senator Washington.

Congratulations of the Senate were extended to Susanna Zellefrow and to Gregory R. Szarko by Senator Wenger.

Congratulations of the Senate were extended to Mr. and Mrs. Louis Wesoloski, Mr. and Mrs. Andrew J. Ondo, Blairsville Community Concert Band and to the Parish of Saint Patrick of East Brady by Senator D. White.

Congratulations of the Senate were extended to Mr. and Mrs. Milburn Cooper, Honorable Frank Abate, Jr., and to the Clarion County Historical Society by Senator M.J. White.

Congratulations of the Senate were extended to Lowell R. Hancock by Senators M.J. White and Orié.

Congratulations of the Senate were extended to Pennsylvania American Water of Butler by Senator M.J. White and others.

Congratulations of the Senate were extended to Reverend Dr. Evelyn C. Graves, Dr. Davis B. Martin, Jr., Duane M. Buchanan, Henry J. McCain, Sr., Dr. Agnes H. Simmons and to Mercer A. Redcross III by Senator A.H. Williams.

Congratulations of the Senate were extended to Colette Speakman, Sean Francis McCreesh, Paul Jeoffrey Mussoni, Erik Anthony Mussoni, Lower Merion Conservancy, Main Line Health/Bryn Mawr Hospital and to MainLine Health/Lankenau Hospital of Bryn Mawr by Senator C. Williams.

Congratulations of the Senate were extended to the Honorable Phyllis W. Beck by Senators C. Williams and Jubelirer.

Congratulations of the Senate were extended to Curtis J. Fluck, Andrew R. Kruger, Richard E. Thompson, David J. Zylka, Richard J. O'Connor and to Ronald V. Phillips by Senator Wonderling.

Congratulations of the Senate were extended to the Independence 101 Housing Program of Norristown by Senator Wonderling and others.

Congratulations of the Senate were extended to Mr. and Mrs. James Moodler and to Dr. and Mrs. Richard G. Stuempfle by Senator Wozniak.

CONDOLENCE RESOLUTIONS

The PRESIDENT laid before the Senate the following resolutions, which were read, considered, and adopted by voice vote:

Condolences of the Senate were extended to the family of the late Dr. J. Peter G. Muhlenberg by Senators Brightbill and O'Pake.

Condolences of the Senate were extended to the family of the late Oliver J. Brown by Senator Madigan.

Condolences of the Senate were extended to the family of the late Carl H. Halstead by Senator Orié.

POSTHUMOUS CITATIONS

The PRESIDENT laid before the Senate the following citations, which were read, considered, and adopted by voice vote:

Posthumous citations honoring the late Jimmy Dorsey and the late Tommy Dorsey were extended to the families by Senator Rhoades.

A posthumous citation honoring the late Lyle B. Stevens was extended to the family by Senator Robbins.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, we are going to now recess to the call of the President pro tempore. We are going to remain here in a vigil to see what happens in the House in terms of House Bill No. 1539 that we passed. If they were to concur, that would mean that we would reconvene for the purpose of signing it. If they do not, we will then likely have a caucus to discuss what options, if any, we would be able to take this evening.

So with that, Madam President, I move that we recess to the call of the President pro tempore.

The PRESIDENT. Without objection, we will now recess to the call of the President pro tempore until further decisions are made.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE AMENDMENTS BY AMENDING SAID AMENDMENTS TO HOUSE BILL

The Clerk of the House of Representatives informed the Senate that the House has concurred in amendments made by the Senate by amending said amendments to **HB 1539**, in which concurrence of the Senate is requested.

MOTION TO SUSPEND RULE XIV

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I move that the Senate suspend Rule XIV to the extent that it requires that bills containing amendments by the House be referred to the Committee on Rules and Executive Nominations, and that House Bill No. 1539 be placed directly on the Calendar.

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

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.
The PRESIDENT. Senate Rule XIV is suspended.

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 5**

**BILL ON CONCURRENCE IN
HOUSE AMENDMENTS, AMENDED**

HB 1539 (Pr. No. 3058) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, providing for public official compensation; further providing for reports to the Secretary of Revenue; establishing and providing for appropriation to the Emergency Energy Assistance Fund; and making a repeal related to public official compensation.

On the question,
Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 1539?

MOTION TO SUSPEND RULE XIV

Senator BRIGHTBILL. Madam President, I move that Senate Rule XIV be suspended to permit the offering of an amendment to House Bill No. 1539.

The PRESIDENT. Senator Brightbill moves to suspend Senate Rule XIV for the purpose of offering an amendment to House Bill No. 1539.

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

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak

Fumo	O'Pake	Tartaglione
Gordner	Orie	Thompson

NAY-0

A majority of the Senators having voted "aye," the question was determined in the affirmative.

The PRESIDENT. Senate Rule XIV has been suspended to permit the offering of an amendment.

And the question recurring,
Will the Senate concur in the amendments made by the House to Senate amendments to House Bill No. 1539?

Senator BRIGHTBILL offered the following amendment A4087:

Amend Sec. 5, page 6, lines 2 through 5, by striking out all of said lines and inserting:

Section 5. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

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

POINT OF ORDER

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Stack.

Senator STACK. Madam President, I rise for a point of order with regard to the interest of full disclosure. I want to ask the Chair whether I have a conflict on this issue because, as I understand the bill with this issue of severability or nonseverability, this is to benefit and protect the pay raise for judges, and being that my mother is a municipal court judge and a family member, she would benefit from this legislation. So the question is, Madam President, do I have a conflict, and should I vote on this piece of legislation?

The PRESIDENT. I do not feel there is a conflict since it would not be personal for you since you are not a judge. Your mother is one of a class of judges, and I do not feel there would be any conflict.

Senator STACK. Thank you, Madam President.

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Madam President, would that apply to Senator Mary Jo White, whose husband is a Common Pleas judge, to me, since my wife is a Commonwealth Court judge, and to Senator Orie, whose sister is a Superior Court judge?

The PRESIDENT. The same ruling would apply because you are not a judge, it is one of your family.

The PRESIDENT pro tempore. Thank you, Madam President.

And the question recurring,
Will the Senate agree to the amendment?
It was agreed to.

Without objection, the bill, as amended, was passed over in its order at the request of Senator BRIGHTBILL.

ANNOUNCEMENT BY MAJORITY LEADER

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, we are preparing another Supplemental Calendar and we expect to vote the bill as amended, and until we do, I ask that we stand at ease and stay on the floor.

The PRESIDENT. The Senate will stand at ease.
(The Senate was at ease.)

**SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 6**

**SENATE CONCURS IN HOUSE AMENDMENTS
AS AMENDED**

HB 1539 (Pr. No. 3059) – The Senate proceeded to consideration of the bill, entitled:

An Act amending the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, providing for public official compensation; further providing for reports to the Secretary of Revenue; establishing and providing for appropriation to the Emergency Energy Assistance Fund; and making a repeal related to public official compensation.

On the question,

Will the Senate concur in the amendments made by the House, as further amended by the Senate, to House Bill No. 1539?

Senator BRIGHTBILL. Madam President, I move that the Senate do concur in the amendments made by the House, as further amended by the Senate, to House Bill No. 1539.

On the question,

Will the Senate agree to the motion?

The yeas and nays were required by Senator BRIGHTBILL and were as follows, viz:

YEA-50

Armstrong	Greenleaf	Piccola	Tomlinson
Boscola	Hughes	Pileggi	Vance
Brightbill	Jubelirer	Pippy	Washington
Browne	Kasunic	Punt	Waugh
Conti	Kitchen	Rafferty	Wenger
Corman	LaValle	Regola	White, Donald
Costa	Lemmond	Rhoades	White, Mary Jo
Earll	Logan	Robbins	Williams, Anthony H.
Erickson	Madigan	Scarnati	Williams, Constance
Ferlo	Mellow	Stack	Wonderling
Fontana	Musto	Stout	Wozniak
Fumo	O'Pake	Tartaglione	
Gordner	Orie	Thompson	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

ANNOUNCEMENT BY MAJORITY LEADER

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, for the information of the Members, we are going to recess to the call of the President pro tempore. We will be on a 6-hour call, which means that all Members should be in a position where they can be back at the Capitol, ready to go, in 6 hours.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, I would like to ask the Majority Leader if we are going to come back unilaterally or only if the House does something? Is that the reason for the 6-hour call? I do not want to be anxious for the next 2 weeks without a reason. I want to have a little bit of quiet and rest.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. I understand, Madam President. Obviously, there would be no need for us to come back unless the House were to do something. What we would desire is if the House should come back, we would be able to come back and finish this job quickly that both Caucuses have undertaken in good faith and moved along in order to affect this repeal.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Madam President, that is all I want to know. I will watch PCN and see what happens in the House. Then I will know.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I am sure that the gentleman will be glued to the TV.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Absolutely, Madam President.

RECESS

The PRESIDENT. Without objection, the Senate stands in recess to the call of the President pro tempore.

AFTER RECESS

The PRESIDENT. The time of recess having expired, the Senate will come to order.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Madam President, I move that the Senate do now recess until Monday, November 14, 2005, at 3:25 p.m., Eastern Standard Time.

The motion was agreed to by voice vote.

The Senate recessed at 11:55 p.m., Eastern Standard Time.