

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Aug. 4, 1991, P.L. 97, No. 22

Cl. 72

Session of 1991

No. 1991-22

HB 185

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for the imposition of sales and use tax on certain services and for the reissuance of sales and use tax licenses; providing for the increase of personal income tax, for poverty exemptions to the tax, for notice of certain sales and transfers and for the withholding of certain tax on shares; further providing for the imposition, rate and collection of corporate net income tax and capital stock and franchise tax; further providing for the collection of bank shares tax, insurance premiums tax, and title insurance and trust companies tax; extending the utilities gross receipts tax; further providing for the collection of the public utility realty tax; increasing the rate of the cigarette tax; imposing a cigarette floor tax; further providing for commissions for cigarette tax agents, and dedicating a portion of the revenues for agricultural farmland preservation and children's health care; further providing for imposition, collection and administration of tax on property passing upon death; further providing for the reports and payments of certain estimated taxes; and making repeals.

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

Section 1. Section 201(b), (c), (d), (f), (g), (i), (k), (l), (m), (o) and (t) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended August 31, 1971 (P.L.362, No.93), September 9, 1971 (P.L.437, No.105), May 2, 1974 (P.L.269, No.75), July 20, 1974 (P.L.563, No.192), November 26, 1978 (P.L.1287, No.306), December 9, 1980 (P.L.1136, No.202), May 2, 1985 (P.L.28, No.13) and July 2, 1986 (P.L.318, No.77), are amended and the section is amended by adding clauses to read:

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

* * *

(b) "Maintaining a place of business in this Commonwealth."

(1) Having or maintaining within this Commonwealth, directly or by a subsidiary, an office, distribution house, sales house, warehouse, service enterprise or other place of business, or any agent of general or restricted authority irrespective of

whether the place of business or agent is located here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this Commonwealth; or

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

(3) Regularly or substantially soliciting orders within this Commonwealth in connection with the lease, sale or delivery of tangible personal property to or the performance thereon of services **or in connection with the sale or delivery of the services described in subclauses (11) through (18) of clause (k) of this section** for residents of this Commonwealth by means of catalogues or other advertising, whether such orders are accepted within or without this Commonwealth.

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

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

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

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

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

(5) Research having as its objective the production of a new or an improved (i) product or utility service, or (ii) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

(6) **Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.**

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

* * *

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

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

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

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

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

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

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

(7) The production, processing and bottling of non-alcoholic beverages for wholesale distribution.

(8) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.

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

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

(11) The processing of used lubricating oils.

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

* * *

(f) "Purchase at retail."

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

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

(3) The obtaining for a consideration of those services described in subclauses (2), (3) and (4) of clause (k) of this section other than for resale.

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

(5) The obtaining for a consideration of those services described in subclauses (11) through (18) of clause (k) of this section.

The term "purchase at retail" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania Liquor Store" by any person for any purpose, and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor" or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "purchase at retail" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any purchase or acquisition of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

(g) "Purchase price."

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

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

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

(4) Where there is a transfer or retention of possession or custody, whether it be termed a rental, lease, service or otherwise, of tangible personal property including, but not limited to linens, aprons, motor vehicles, trailers, tires,

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

(5) With respect to the tax imposed by subsection (b) of section 202 upon any tangible personal property originally purchased by the user of such property six months or longer prior to the first taxable use of such property within the Commonwealth, such user may elect to pay tax on a substituted base determined by considering the purchase price of such property for tax purposes to be equal to the prevailing market price of similar **tangible** personal property at the time and place of such first use within the Commonwealth. Such election must be made [by filing a notice thereof in the form specified by] **at the time of filing a tax return with** the department and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within [one year] **six months** of the due date of such report and payment, as provided for by subsections (a) and (c) of section 217 of this article.

* * *

(i) "Resale."

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

(2) The physical incorporation of **tangible** personal property as an ingredient or constituent into other **tangible** personal property, which is to be sold in the regular course of business or the performance of those services described in subclauses (2), (3) and (4) of clause (k) of this section upon **tangible** personal property which is to be sold in the regular course of business or where the person incorporating such property has undertaken at the time of purchase to cause it to be transported in interstate commerce to a destination outside this Commonwealth.

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

(4) The term "resale" shall not include any sale of "malt or brewed beverages" by a "retail dispenser," or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of the "Liquor Code."

(5) The physical incorporation of **tangible** personal property as an ingredient or constituent in the construction of foundations for machinery or equipment the sale or use of which is excluded from tax under the provisions of paragraphs (A), (B), (C) and (D) of subclause (8) of clause (k) and subparagraphs (i), (ii), (iii) and (iv) of paragraph (B) of subclause (4) of clause (o) of this section, whether such foundations at the time of construction or transfer constitute **tangible** personal property or real estate.

* * *

(k) "Sale at retail."

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

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

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

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

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other **tangible** personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service.

[(5) Any retention after March 7, 1956, of possession, custody or a license to use or consume pursuant to a rental contract or other lease arrangement (other than as security).]

(6) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause after April 15, 1959, pursuant to a rental or service contract or other arrangement (other than as security).

(7) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause after August 20, 1959, pursuant to a rental or service contract or other arrangement (other than as security).]

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

The term "sale at retail" shall not include (i) any such transfer of tangible personal property or rendition of services for the purpose of resale, or (ii) such rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in [any of] the operations of--

(A) The manufacture of **tangible** personal property;

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised fur-bearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under [the act of June 3, 1937 (P.L.1225), known as "The Game Law"] **34 Pa.C.S. (relating to game);**

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

(D) [The processing of personal property] **Processing** as defined in clause (d) of this section.

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

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

The exclusion provided in paragraph (C) shall not apply to (i) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service, (ii) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or (iii) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to the services enumerated in clauses (k)(11) through (18) and (w) through (kk).

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

(10) The term "sale at retail" with respect to "liquor" and "malt or brewed beverages" shall include the sale of "liquor" by any "Pennsylvania liquor store" to any person for any

purpose, and the sale of "malt or brewed beverages" by a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" to any person for any purpose, except sales by a "manufacturer of malt or brewed beverages" to a "distributor" or "importing distributor" or sales by an "importing distributor" to a "distributor" within the meaning of the "Liquor Code." The term "sale at retail" shall not include any sale of "malt or brewed beverages" by a "retail dispenser" or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any sale of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

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

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

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

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

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

(16) **The rendition for a consideration of computer programming services or other computer-related services, including, but not limited to, providing computer integrated systems design, computer processing, data preparation or processing services, information retrieval services or computer facilities management services.**

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

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

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

(m) "Tangible personal property." Corporeal personal property including, but not limited to, goods, wares, merchandise, steam and natural and manufactured and bottled gas for non-residential use, electricity for non-residential use, [intrastate telephone and telegraph service for non-residential use, spirituous or vinous liquor and malt or brewed beverages and soft drinks; but the term shall not include household supplies purchased at retail establishments for residential consumption, including but not limited to, soaps, detergents, cleaning and polishing preparations, paper goods, household wrapping supplies and items of similar nature, or sanitary napkins, tampons or similar items used for feminine hygiene. Nor shall said term include steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate telephone or telegraph service when purchased directly by the user thereof solely for his own residential use.] **pay television, except for minimum pay television, spirituous or vinous liquor and malt or brewed beverages and soft drinks, interstate telephone, telegraph and telecommunications service originating or terminating in the Commonwealth and charged to a service address in this Commonwealth, intrastate telephone, telegraph and telecommunications service with the exception of subscriber line charges and basic local telephone service for residential use, provided further, the service address of any intrastate**

telephone, telegraph or telecommunications service is deemed to be within this Commonwealth or within a political subdivision, regardless of how or where billed or paid. In the case of any such interstate or intrastate telephone, telegraph and telecommunications service, any charge paid through a credit or payment mechanism which does not relate to a service address, such as a bank, travel, credit or debit card, is deemed attributable to the address of origination of the telephone, telegraph or telecommunications service.

* * *

(o) "Use."

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

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

(3) The obtaining by a purchaser of the services of (i) washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services, and (ii) inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other **tangible** personal property other than wearing apparel or shoes, whether or not the services are performed directly or by any means other than by means of coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service: And provided further, That the term "use" shall not include--

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

(B) The use or consumption of tangible personal property, including but not limited to machinery and equipment and parts therefor, and supplies or the obtaining of the services described in subclauses (2), (3) and (4) of this clause directly in [any of] the operations of--

(i) The manufacture of **tangible** personal property;

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

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

(iv) [The processing of personal property] **Processing** as defined in subclause (d) of this section.

The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to any vehicle required to be registered under The Vehicle Code except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than **directly used** machinery, equipment, parts or foundations therefor that may be affixed to such real estate. The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraphs (i), (ii), (iii) and (iv).

The exclusion provided in subparagraph (iii) shall not apply to (A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service[,] **or** (B) [construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or (C)] tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

The exclusion provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to the services enumerated in clauses (o)(9) through (15) and (w) through (kk).

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

(6) The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "use" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include the exercise of any right or power incidental to the ownership, custody or possession of "liquor" or "malt or brewed beverages" obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the "Liquor Code."

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

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

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

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

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

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

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

(14) **The obtaining by the purchaser of computer programming services or other computer-related services, including, but not limited to, providing computer integrated systems design, computer processing, data preparation or processing services, information retrieval services or computer facilities management services.**

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

* * *

(t) "Transient vendor."

(1) Any person who--

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

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

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

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

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

* * *

(w) **"Lobbying services." Providing the services of a lobbyist, as defined in the definition of "lobbyist" in section 2 of the act of September 30, 1961 (P.L.1778, No.712), known as the "Lobbying Registration and Regulation Act."**

(x) **"Adjustment services, collection services or credit reporting services." Providing collection or adjustments of accounts receivable or mercantile or consumer credit reporting, including, but not limited to, services of the type provided by adjustment bureaus or collection agencies, consumer or mercantile credit reporting bureaus, credit bureaus or agencies, credit clearinghouses or credit investigation services. Such services do not include providing credit card service with**

collection by a central agency, providing debt counseling or adjustment services to individuals or billing or collection services provided by local exchange telephone companies.

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

(z) "Disinfecting or pest control services." Providing disinfecting, termite control, insect control, rodent control or other pest control services. Such services include, but are not limited to, deodorant servicing of rest rooms, washroom sanitation service, rest room cleaning service, extermination service or fumigating service.

(aa) "Building maintenance or cleaning services." Providing services which include, but are not limited to, janitorial, maid or housekeeping service, office or interior building cleaning or maintenance service, window cleaning service, floor waxing service, lighting maintenance service such as bulb replacement, cleaning, chimney cleaning service, acoustical tile cleaning service, venetian blind cleaning, cleaning and maintenance of telephone booths or cleaning and degreasing of service stations. This term shall not include repairs on buildings and other structures.

(bb) "Employment agency services." Providing employment services to a prospective employer or employe other than employment services provided by theatrical employment agencies and motion picture casting bureaus. Such services shall include, but are not limited to, services of the type provided by employment agencies, executive placing services and labor contractor employment agencies other than farm labor.

(cc) "Help supply services." Providing temporary or continuing help where the help supplied is on the payroll of the supplying person or entity, but is under the supervision of the individual or business to which help is furnished. Such services include, but are not limited to, service of a type provided by labor and manpower pools, employe leasing services, office help supply services, temporary help services, usher services, modeling services or fashion show model supply services. Such services shall not include providing farm labor services.

(dd) "Computer programming services." Providing computer programming or computer software design and analysis. Such services include, but are not limited to, services of the type provided by or through computer programming services, customer computer programming services, computer code authors and free-lance computer software writers, software modification, custom software programming, custom computer programs or system software development, custom computer software systems analysis and design, custom applications software programming, computer code authors or free-lance computer software writers.

(ee) "Computer integrated systems design." Developing or modifying computer software and packaging or bundling the software with computer hardware (computers and computer peripheral equipment) to create and market an integrated system for specific application. A business is providing such services under this clause only if it provides each of the following services:

(1) the development or modification of the computer software;

(2) the marketing of computer hardware; and

(3) involvement in all phases of systems development from design through installation.

Such services under this clause include, but are not limited to, computer systems integration, computer network systems integration, local area network (LAN) systems integration, office automation, computer systems value-added resellers, computer systems turnkey vendors, computer-aided design (CAD) systems services, computer-aided engineering (CAE) systems services or computer-aided manufacturing (CAM) systems services.

(ff) "Computer processing, data preparation or processing services." Such services include, but are not limited to, providing processing and preparation of reports from data supplied by the customer or a specialized service, such as data entry; making data processing equipment available on an hourly, time-sharing or other basis; computer timesharing and leasing or rental of computer time; computer tabulating and calculating services; data entry, processing or verification services; keypunch services; or optical scanning data services.

(gg) "Information retrieval services." Providing computer on-line information retrieval services. Such services include, but are not limited to, data base information retrieval services, on-line information retrieval services, on-line data base information retrieval services or remote data base information retrieval services.

(hh) "Computer facilities management services." Providing onsite management or controlling the operation of data processing facilities or similar services.

(ii) "Other computer-related services." Supplying computer-related services not described elsewhere in clauses (dd) through (hh). Such services include, but are not limited to, computer consulting services; data base development and data processing consulting services; disk, diskette or tape conversion services; disk, diskette or tape recertification services; computer hardware and software requirement analysis services; software documentation services; software installation services; software training services; or reformatting or editing services.

(jj) "Lawn care service." Providing services for lawn upkeep, including, but not limited to, fertilizing, lawn mowing, shrubbery trimming or other lawn treatment services.

(kk) "Storage service." A building or portion of a building or similar structure for purposes of storing corporeal personal property, including, but not limited to, goods, wares or merchandise, spiritous or vinous liquor and malt or brewed beverages, furniture and household goods, automobiles, furs, textiles, perishable goods under refrigeration, farm products, cotton compresses or tobacco. The term excludes storage of such property which is unloaded from maritime vessels and then later stored or which is stored and then later loaded on maritime vessels when such storage or loading takes place within twenty-five miles of a "port district," as defined by the act of July 10, 1989 (P.L.291, No.50), known as the "Philadelphia Regional Port Authority Act."

(ll) "Pay television." Cable television; community antenna television; or any other distribution of television, video or radio services, with or without the use of wires, to subscribers or paying customers or users, including, but not limited to, installation and repair services, single-event video service or any service having any connection with such services.

(mm) "Minimum pay television." That portion of pay television for which a periodic minimum fee is paid to receive pay television on an ongoing basis.

Section 2. Section 202(c) of the act is amended to read:

Section 202. Imposition of Tax.--* * *

(c) Notwithstanding any other provisions of this article, the tax with respect to [non-residential intrastate telephone service and intrastate] **telephone, telegraph and telecommunications** service within the meaning of clause (m) of section 201 of this article shall, except for telegrams paid for in cash at telegraph offices, be computed at the rate of six per cent upon the total amount [billed] **charged** to customers [periodically] for such services, irrespective of whether such [billing] **charge** is based upon a flat rate or upon a message unit charge. **To prevent actual multistate taxation of interstate telephone, telegraph or telecommunications service, any taxpayer, upon proof that the taxpayer has paid a similar tax to another state on the same interstate telephone, telegraph or telecommunications service, shall be allowed a credit against the tax imposed by this section on the same interstate telephone, telegraph or telecommunications service to the extent of the amount of such tax properly due and paid to such other state.**

* * *

Section 3. Section 204(4), (5), (6), (7), (8), (9), (16), (19), (20), (21), (22), (23) and (29) of the act, amended September 9, 1971 (P.L.437, No.105), are amended and the section is amended by adding clauses to read:

Section 204. Exclusions from Tax.--The tax imposed by section 202 shall not be imposed upon

* * *

(4) [The sale at retail or use of supplies and materials to be used in the fulfillment of contracts for the construction, reconstruction, remodeling, repairing, maintenance or sale of real estate when such contract was entered into

(i) Prior to March 7, 1956, and is at a fixed price not subject to change or modification by reason of the tax imposed by the Tax Act of 1963 for Education; or

(ii) Pursuant to the obligation of a bid or bids submitted prior to March 7, 1956, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of the tax imposed by the act in effect prior to this article.

Provided, however, That notice of such contract or bid by reason of which an exclusion is claimed under this clause (4) must be given by the taxpayer to the department on or before June 15, 1956.] **The sale at retail or use of disposable diapers, incontinence products, toilet paper, sanitary napkins, tampons or similar items used for feminine hygiene.**

(5) [The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate, when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after March 7, 1956, but prior to April 15, 1959, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as

amended April 15, 1959 (P.L.20), and from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.] **The sale at retail or use of steam, natural and manufactured and bottled gas, fuel oil, electricity or intrastate subscriber line charges and basic local telephone service or telegraph service when purchased directly by the user thereof solely for his own residential use.**

(6) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after April 15, 1959, but prior to August 20, 1959, shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(7) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after August 20, 1959, but prior to June 1, 1963 shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of the tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(8) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing, maintenance or sale of such real estate when the contract is, either at a fixed price not subject to change or modification, or entered into pursuant to the obligation of a formal written bid which cannot be altered or withdrawn, and, in either case, such contract was entered into or such bid made on or after June 1, 1963, but prior to January 1, 1968, shall

be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(9) The sale at retail or use of tangible personal property or services subject to tax under this article, but which prior to the effective date of this article were excluded from tax under the provisions of the "Tax Act of 1963 for Education" shall be excluded from the tax imposed by this article, provided such sale at retail or use occurred pursuant to and in fulfillment of a written fixed price sales or construction contract or formal bid entered into prior to the effective date of this article by the person who otherwise would be subject to tax under this article and another, and which contract or bid cannot be altered, modified or withdrawn by the parties. The exclusion from tax provided herein shall not be claimed by any person from a vendor but shall be claimed only by the filing of a refund petition with the department as provided in this article.]

* * *

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

* * *

[(19) The sale at retail or use of supplies and materials to be used exclusively in the fulfillment of a contract for the construction, reconstruction, remodeling, repairing or maintenance of real estate, when such contract was entered into prior to March 7, 1956, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945": Provided, That notice of a claim of exemption under this clause is received by the department within fifteen days after the effective date of this clause under the Tax Act of 1963 for Education.

(20) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after March 7, 1956, but prior to April 15, 1959, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended April 15, 1959 (P.L.20), and from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(21) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after April 15, 1959, but prior to August 20, 1959, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one-half of one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended August 20, 1959 (P.L.729), and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended May 29, 1963 (P.L.49) and from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(22) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate when the contract was entered into on or after August 20, 1959, but prior to June 1, 1963, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education as amended May 29, 1963 (P.L.49) and from the additional one per cent of the tax imposed by section 201 of the Tax Act of 1963 for Education, as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.

(23) The sale at retail or use of materials to be incorporated into and made a part of real estate pursuant to a contract for the construction, reconstruction, remodeling, repairing or maintenance of such real estate, when the contract was entered into on or after June 1, 1963, but prior to January 1, 1968, between the person who would otherwise be subject to the tax and a municipal authority incorporated under the "Municipality Authorities Act of 1945," shall be exempt from the additional one per cent of tax imposed by section 201 of the Tax Act of 1963 for Education, as amended January 1, 1968 (P.L.918): Provided, however, That the exemption granted by this clause shall not be claimed by the purchaser from any vendor but shall be claimed only by the filing of a refund petition with the department.]

* * *

(29) The sale at retail or use of food and beverages for human consumption including candy[, gum and similar confections] **and gum**, except that this exclusion shall not apply with respect to--

- (i) Soft drinks;
- (ii) Malt and brewed beverages and spirituous and vinous liquors;
- (iii) Food [and beverages (except when purchased at, or from a school or church in the ordinary course of activities of such organization) when the purchase price of the total transaction is more than ten cents (10¢)] **or beverages ready to eat, whether sold for consumption on or off the premises or**

on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased (i) from persons engaged in the business of catering, or (ii) from persons engaged in the business of operating establishments, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels [and other eating places. For the purpose of this subclause (iii), beverages shall not include malt and brewed beverages and spirituous and vinous liquors, but shall include soft drinks, and the price of such soft drinks shall be considered together with the price of other beverages and food in determining whether the purchase price of the total transaction is more than ten cents (10¢).], night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, vending machines, snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops, bakery, pastry and donut shops and other establishments whether mobile or immobile from which food or beverages ready to eat are sold. For purposes of this clause, a delicatessen, grocery store, supermarket, farmer's market or a convenience store shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, cooked chicken, sandwiches, prepared salads, salad bars, prepared desserts, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. The sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization is not subject to tax.

* * *

(47) The net purchase price of the sale at retail or use of electric vehicles, hybrid electric vehicles and zero emission vehicles as defined in 75 Pa.C.S. § 102 (relating to definitions). "Net purchase price" shall mean the difference between the purchase price of an electric vehicle, hybrid electric vehicle or zero emission vehicle and the average retail list price of a comparable vehicle. "Comparable vehicle" shall mean, in the case of a passenger car, the overall average list price of a passenger car in the United States; in the case of a passenger truck, the overall average list price of a passenger truck in the United States; and, in the case of a van, the overall average retail list price of a van in the United States. The Department of Revenue shall promulgate rules and regulations to enforce this exemption and determine the average retail list price as defined under "comparable vehicle" on an annual basis. In the event that a qualified motor vehicle is something other than a passenger car, passenger truck or van, the Department of Revenue shall determine the average list price of a comparable vehicle classification. This clause shall expire December 31, 1999.

(48) The sale at retail or use of power units for vehicles that are exempt under clause (47). This clause shall expire December 31, 1999.

Section 4. Section 205(a) of the act, amended June 9, 1978 (P.L.463, No.62), is amended to read:

Section 205. Alternate Imposition of Tax; Credits.--(a) If any person actively and principally engaged in the business of selling new or used motor vehicles, trailers or semi-trailers, and registered with the department in the "dealer's class," acquires a motor vehicle, trailer or semi-trailer for the purpose of resale, and prior to such resale, uses the motor vehicle, trailer or semi-trailer for a taxable use under this

act during a period not exceeding one year from the date of acquisition to the date of resale, such person may[, upon notice to the department] within ten days of the commencement of such use, elect to pay a tax equal to six per cent of the fair rental value of the motor vehicle, trailer or semi-trailer during such use. Should such motor vehicle, trailer or semi-trailer be used for a taxable use after a period of one year, the taxpayer shall be liable for a tax on the fair market value of such motor vehicle, trailer or semi-trailer at the time of acquisition, but shall be allowed a credit equal to the tax paid pursuant to the election provided for in this section. This section shall not apply to the use of a vehicle as a wrecker, parts truck, delivery truck or courtesy car.

* * *

Section 5. Section 208 of the act, amended September 9, 1971 (P.L.437, No.105), is amended to read:

Section 208. Licenses.--(a) Every person maintaining a place of business in this Commonwealth, selling or leasing services or tangible personal property, the sale or use of which is subject to tax and who has not hitherto obtained a license from the department, shall, prior to the beginning of business thereafter, make application to the department, on a form prescribed by the department, for a license. If such person maintains more than one place of business in this Commonwealth, the license shall be issued for the principal place of business in this Commonwealth.

(b) The department shall, after the receipt of an application, issue the license applied for under subsection (a) of this section[. The license shall be nonassignable and of permanent duration.], **provided said applicant shall have filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan. Such license shall be nonassignable. All licensees as of the effective date of this subsection shall be required to file for renewal of said license on or before January 31, 1992. Licenses issued through April 30, 1992, shall be based on a staggered renewal system established by the department. Thereafter, any license issued shall be valid for a period of five years.**

(b.1) If an applicant for a license or any person holding a license has not filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan, the department may refuse to issue, may suspend or may revoke said license. The department shall notify the applicant or licensee of any refusal, suspension or revocation. An applicant or licensee aggrieved by the determination of the department may file an appeal pursuant to the provisions for administrative appeals in this article. In the case of a suspension or revocation which is appealed, the license shall remain valid pending a final outcome of the appeals process.

(c) Any person who, upon the expiration of sixty days after the effective date of this article, shall maintain a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department, shall be guilty of a summary offense, and upon conviction thereof in a summary proceeding, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than [three hundred dollars (\$300)] **one thousand dollars (\$1,000)**, and in default thereof, to undergo

imprisonment of not less than five days nor more than thirty days. The penalties imposed by this section shall be in addition to any other penalties imposed by this article.

(d) Failure of any person to obtain a license shall not relieve him of liability to pay the tax imposed by this article.

Section 6. Sections 252 and 268 of the act are amended to read:

Section 252. Refunds.--The department shall, pursuant to the provisions of sections 253 and 254, 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, **except a refund granted for tax paid in conjunction with a contract with a charitable organization, volunteer firemen's organization, nonprofit educational institution, religious organization, the United States, this Commonwealth or its instrumentalities or political subdivisions shall be made to the aforementioned entities:** 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 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 268. Crimes.--(a) Fraudulent Return. Any person who with intent to defraud the Commonwealth shall wilfully make, or cause to be made, any return required by this article, which is false, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding two thousand dollars (\$2000), or undergo imprisonment not exceeding three years, or both.

(b) Other Crimes. Except as otherwise provided by subsection (a) of this section, any person [maintaining a place of business in this Commonwealth,] who advertises or holds out or states to the public or to any purchaser or user, directly or indirectly, that the tax or any part thereof imposed by this article will be absorbed by such person, or that it will not be added to the purchase price of the tangible personal property or services described in subclauses (2), (3) [and], (4) **and (11) through (18)** of clause (k) of section 201 of this article sold or, if added, that the tax or any part thereof will be refunded, other than when such person refunds the purchase price because of such property being returned to the vendor, and any person [maintaining a place of business in this Commonwealth and] selling or leasing tangible personal property or said services the sale or use of which by the purchaser is subject to tax hereunder, who shall wilfully fail [or refuse] to collect the tax from the purchaser and **timely** remit the same to the department, and any person who shall wilfully fail[,] or neglect [or refuse] to **timely** file any return or report required by this article or any taxpayer who shall refuse to **timely** pay any tax, penalty or interest imposed or provided for by this article, or who shall wilfully fail to preserve his books, papers and records as directed by the department, or any person who shall refuse to permit the department or any of its authorized agents to examine his books, records or papers, or who shall knowingly make any incomplete, false or fraudulent

return or report, or who shall do, or attempt to do, anything whatever to prevent the full disclosure of the amount or character of taxable sales purchases or use made by himself or any other person, or shall provide any person with a false statement as to the payment of tax with respect to particular tangible personal property or said services, or shall make, utter or issue a false or fraudulent exemption certificate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1000) and costs of prosecution, or undergo imprisonment not exceeding one year, or both: Provided, however, That any person maintaining a place of business outside this Commonwealth may absorb the tax with respect to taxable sales made in the normal course of business to customers present at such place of business without being subject to the above penalty and fines. The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this article.

Section 7. Section 301 (c.2), (e.1) and (o.2) of the act, added March 13, 1974 (P.L.179, No.32), are amended and the section is amended by adding clauses to read:

Section 301. Definitions.--The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. Any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1954, as amended to the date on which this article is effective:

* * *

(c.2) "Claimant" means a person:

(1) who is subject to the tax imposed under this article, [is not a dependent of another person,] but is entitled to claim against such tax the poverty tax provisions as provided by this act;

(2) who has a taxable year of not less than twelve months; and

(3) with respect to whom no deduction under section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, is allowable to any nonhousehold member for a taxable year beginning in the calendar year in which the claimant's taxable year begins.

* * *

(e.1) "Dependent" means [a spouse or child who derives more than one-half of his total support during the entire taxable year from a claimant entitled to claim the poverty exemption. Any person who is a dependent pursuant to the provisions of the Internal Revenue Code during a taxable year shall prima facie be deemed a dependent for purposes of this act] **any nonhousehold member with respect to whom a deduction under section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, is allowable to the claimant for the claimant's taxable year or to a household member for the claimant's taxable year.**

* * *

(i.1) "Total household income" means all poverty income received by a claimant and every other household member for the taxable year of the claimant.

(i.2) "Household member" means any individual who, for more than one-half of the taxable year of the claimant, has as his principal place of abode the same home as the claimant and is a member of the same household as the claimant.

* * *

(o.2) "Poverty income" means for the purpose of determining eligibility for special tax provisions [all moneys or property (including interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other act of the General Assembly of the Commonwealth of Pennsylvania or under the laws of the United States) received of whatever nature and from whatever source derived but not including (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security and retirement; or (vii) any compensation received by United States servicemen serving in a combat zone.] **all taxable and nontaxable income from whatever source derived, including, but not limited to, salaries, wages, bonuses, commissions, income from self-employment, alimony, support money, cash public assistance and relief, the gross amount of any pensions or annuities including railroad retirement benefits, all benefits received under the Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.) except Medicare benefits, all benefits received under State unemployment insurance laws and veterans' disability payments, all interest received from the Federal or any State government, or any instrumentality or political subdivision thereof, realized capital gains, rentals, workmen's compensation and the gross amount of loss of time insurance benefits, life insurance benefits and proceeds, except the first five thousand dollars (\$5,000) of the total of death benefit payments, and gifts of cash or property, other than transfers by gift between members of a household, in excess of a total value of three hundred dollars (\$300), but shall not include surplus food or other relief in kind supplied by a governmental agency or property tax or rent rebate or inflation dividend.**

* * *

Section 8. The act is amended by adding a section to read:

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

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

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

(3) A temporary assessment equal to an additional three-tenths per cent for the second half of the taxable year commencing with or within calendar year 1991 through the first

half of the taxable year commencing with or within calendar year 1992.

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

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

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

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

Section 9. Section 302.1 of the act, added December 23, 1983 (P.L.370, No.90), is amended to read:

Section 302.1. Rate Changes Occurring During the Taxable Year.--Notwithstanding the provisions of section 302, the tax rate to be used for the computation of tax for any taxable year where the rate changes during the taxable year shall be the monthly weighted average of the rates applicable during the taxable year, regardless of when during the taxable year the income is received. [The rate imposed by section 302 will be used to determine withholding tax liability under section 316.]

Section 10. Section 302.2 of the act is repealed.

Section 11. Section 304 of the act, amended or added March 13, 1974 (P.L.179, No.32) and October 14, 1988 (P.L.737, No.106), is amended to read:

Section 304. Special Tax Provisions for Poverty.--(a) The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article VIII of the Constitution of the Commonwealth of Pennsylvania which provides therein for the establishing as a class or classes of subjects of taxation the property or privileges of persons who, because of poverty are determined to be in need of special tax provisions hereby declares as its legislative intent and purpose to implement such power under such constitutional provision by establishing special tax provisions as hereinafter provided in this act.

(b) The General Assembly having determined that there are persons within this Commonwealth whose incomes are such that imposition of a tax thereon would deprive them and their dependents of the bare necessities of life and having further determined that poverty is a relative concept inextricably joined with actual income and the number of people dependent upon such income deems it to be a matter of public policy to provide special tax provisions for that class of persons hereinafter designated to relieve their economic burden.

(c) For the taxable year [1974] **1991** and each year thereafter any claimant who meets the following standards of eligibility established by this act as the test for poverty shall be deemed a separate class of subject of taxation, and, as such, shall be entitled to the benefit of the special provisions of this act.

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

(1) If [the poverty] **total household** income [of the claimant during an entire taxable year] is [six thousand three hundred dollars (\$6,300)] **seven thousand dollars (\$7,000)** or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of [one thousand five hundred dollars (\$1,500) for the first additional dependent and an additional income allowance of one thousand dollars (\$1,000) for each additional dependent of the claimant] **two thousand dollars (\$2,000) for each dependent and household member.**

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

- (i) Ninety per cent if not in excess of one hundred dollars (\$100).
- (ii) Eighty per cent if not in excess of two hundred dollars (\$200).
- (iii) Seventy per cent if not in excess of three hundred dollars (\$300).
- (iv) Sixty per cent if not in excess of four hundred dollars (\$400).
- (v) Fifty per cent if not in excess of five hundred dollars (\$500).
- (vi) Forty per cent if not in excess of six hundred dollars (\$600).
- (vii) Thirty per cent if not in excess of seven hundred dollars (\$700).
- (viii) Twenty per cent if not in excess of eight hundred dollars (\$800).
- (ix) Ten per cent if not in excess of nine hundred dollars (\$900).

Section 12. The act is amended by adding a section and a part to read:

Section 321.1. Bulk and Auction Sales and Transfers, Notice.--(a) Every employer, who is liable for filing returns in accordance with the provisions of this part and who shall sell or cause to be sold at auction, or who shall sell or transfer in bulk, fifty-one per cent or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate held by or on behalf of such person, shall give the department ten days' written notice of the sale or transfer prior to the completion of the transfer of such property in the manner prescribed by 13 Pa.C.S. § 6107 (relating to the notice).

(b) Whenever the seller or transferor shall fail to give such notice to the department or whenever the department shall, upon written notice, inform the purchaser or transferee that a possible claim for tax imposed by this article exists, any sums of money, property or choses in action or other consideration, which the purchaser or transferee is thereafter required to transfer over to the seller or transferor, shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller or

transferor, and the purchaser or transferee is forbidden to transfer to the seller or transferor any such sums of money, property or choses in action or other consideration to the extent of the amount of the Commonwealth's claim. For failure to comply with the provisions of this section, the purchaser or transferee shall be liable for the payment to the Commonwealth of any such taxes theretofore or thereafter determined to be due from the seller or transferor, and such liability may be assessed and enforced in the same manner as the liability for tax under this article: Provided, That nothing contained in this provision shall apply to sales or transfers made under any order of court: And provided further, That the written notice required to be filed with the department by this provision shall be deemed to be satisfied when the requirements of 15 Pa.C.S. § 139 (relating to tax clearance of certain fundamental transactions) as to taxes imposed by this article are met.

PART VII-A
WITHHOLDING TAX ON SHARES ON INCOME FROM SOURCES
WITHIN THIS COMMONWEALTH

Section 324. General Rule.--When a partnership, association or Pennsylvania S corporation receives income from sources within this Commonwealth for any taxable year and any portion of such income is allocable to a nonresident partner, member or shareholder thereof, such partnership, association or Pennsylvania S corporation shall pay a withholding tax under this section at such time and in such manner as the department shall prescribe; however, notwithstanding any other provision of this article, all such withholding tax shall be paid over within thirty days following the end of the taxable year.

Section 324.1. Amount of Withholding Tax.--(a) The amount of tax withheld from nonresidents and the amount of the withholding tax payable under section 324 shall be equal to the income from sources within this Commonwealth of the partnership, association or Pennsylvania S corporation which is allocable to nonresident partners, members or shareholders multiplied by the tax rate specified in section 302(b).

(b) There shall not be taken into account any item of income, gain, loss or deduction to the extent allocable to any partner, member or shareholder who is not a nonresident.

Section 324.2. Treatment of Nonresident Partners, Members or Shareholders.--Each nonresident partner, member or shareholder shall be allowed a credit for such partner's, member's or shareholder's share of the withholding tax paid by the partnership, association or Pennsylvania S corporation. Such credit shall be allowed for the partner's, member's or shareholder's taxable year in which, or with which, the partnership, association or Pennsylvania S corporation taxable year (for which such tax was paid) ends.

Section 324.3. Liability for Tax, Interest, Penalties and Additions.--If a partnership, association or Pennsylvania S corporation fails to pay withholding tax as prescribed herein and thereafter such tax is paid, the partnership, association or Pennsylvania S corporation shall not be relieved of the liability for any penalty, interest or addition as a result of failure to properly withhold such tax.

Section 13. Section 325 of the act, amended or added August 31, 1971 (P.L.362, No.93), July 2, 1986 (P.L.318, No.77) and December 22, 1989 (P.L.775, No.110), is amended to read:

Section 325. Declarations of Estimated Tax.--(a) Every resident and nonresident individual, **trust and estate** shall at the time hereinafter prescribed make a declaration of his **or its** estimated tax for the taxable year, containing such information as the department may prescribe by regulations, if his **or its** income, other than from compensation on which tax is withheld under this article, can reasonably be expected to exceed two thousand five hundred dollars (\$2,500).

(b) For the purposes of this article, the term "estimated tax" means the amount which an individual, **trust or estate** estimates to be his **or its** tax due under this article for the taxable year, less the amount which he **or it** estimates to be the sum of any credits allowable against the tax under this article.

(c) A husband and wife may make a joint declaration of estimated tax hereunder as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

(d) Except as hereinafter provided, the date for filing a declaration of estimated tax shall depend upon when the resident or nonresident individual, **trust or estate** determines that his **or its** income on which no tax has been withheld under this article can reasonably be expected to exceed two thousand five hundred dollars (\$2,500) in the taxable year, as follows:

(1) If the determination is made on or before April 1 of the taxable year, a declaration of estimated tax shall be filed no later than April 15 of the taxable year.

(2) If the determination is made after April 1 but before June 2 of the taxable year, the declaration shall be filed no later than June 15 of such year.

(3) If the determination is made after June 1 but before September 2 of the taxable year, the declaration shall be filed no later than September 15 of such year.

(4) If the determination is made after September 1 of the taxable year, the declaration shall be filed no later than January 15 of the year succeeding the taxable year.

(e) Notwithstanding subsection (d) of this section, a declaration of estimated tax of an individual having an estimated gross income from farming for the taxable year which is at least two-thirds of his total estimated gross income for the taxable year may be filed at any time on or before January 15 of the succeeding year, but if the farmer files a final return and pays the entire tax by March 1, the return may be considered as his declaration due on or before January 15.

(f) A declaration of estimated tax of an individual, **trust or estate** having a total estimated tax for the taxable year of one hundred dollars (\$100) or less may be filed at any time on or before January 15 of the succeeding year under regulations of the department.

(g) An individual, **trust or estate** may amend a declaration under regulations of the department.

(h) If on or before January 31 of the year succeeding a taxable year, an individual [files his], **trust or estate files his or its** return for the entire taxable year for which a declaration was required to be filed within the time prescribed by subsection (d)(4) of this section and pays therewith the full amount of the tax shown to be due on the return:

(1) Such return shall be considered as his **or its** declaration which was required to be filed no later than January 15.

(2) Such return shall be considered as the amendment permitted by subsection (g) to be filed on or before January 15 provided the amount of the tax shown on the return is greater than the amount of the estimated tax shown in a declaration previously made.

(i) This article shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(j) This article shall apply to an individual, **trust or estate** having a taxable year of less than twelve months in accordance with procedures prescribed in regulations of the department.

Section 14. Section 345(b) of the act, amended July 1, 1978 (P.L.594, No.114), is amended to read:

Section 345. Lien for Tax.--* * *

(b) The department may, at any time, transmit to the prothonotaries of the respective counties certified copies of all liens for taxes imposed by this article. It shall be the duty of each prothonotary receiving such lien to enter and docket the same of record in his office, which lien shall be indexed as judgments are now indexed. All such liens shall have priority to, and be fully paid before, any other obligation, judgment, claim, lien or estate paid and satisfied out of the judicial sale of said real [estate] **and personal property** with which said [real estate] **property** may subsequently become charged, or for which it may subsequently become liable, subject, however, to mortgage or other liens existing and duly recorded at the time such tax lien is recorded, save and except the cost of sale and of the writ upon which it is made and real estate taxes imposed or assessed upon said property. [The lien of said taxes shall continue for five years from the date of entry and may be revived and continued, in the manner now or hereafter provided for renewal of judgments, and a] **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 of the filing and effect of the lien shall be sent by certified mail to the taxpayer at his last known post office address: And provided further, That the said lien shall have no effect upon any stock of goods, ware or merchandise regularly sold or leased in the ordinary course of business by the person against whom said lien had been entered, unless and until a writ of execution has been issued and a levy made upon said stock of goods, wares and merchandise.

* * *

Section 15. Section 352(b), (d) and (f) of the act, amended June 29, 1984 (P.L.445, No.94), are amended and the section is amended by adding a subsection to read:

Section 352. Additions, Penalties and Fees.--* * *

(b) **(1)** If any part of any underpayment of any tax imposed by Part II of this article is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to five per cent of the underpayment.

(2) If any part of any underpayment of any tax imposed by Part II of this article is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, and the underpayment is from a taxpayer omitting from income an amount properly includable therein which is in excess

of twenty-five per cent of the amount of income stated on the taxpayer's return, there shall be added to the tax an amount equal to twenty-five per cent of the underpayment.

* * *

(d) (1) If any taxpayer fails [to file a declaration of estimated tax or fails] to pay all or any part of an installment of estimated tax, he shall be deemed to have made an underpayment of estimated tax. There shall be added to the tax for the taxable year an amount at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," upon the amount of the underpayment for the period of the underpayment but not beyond the fifteenth day of the fourth month following the close of the taxable year. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to [eighty] **ninety** per cent of the tax (two-thirds in the case of an individual described in subsection (e) of section 325) shown on the return for the taxable year (or if no return was filed, of the tax for such year) over the amount, if any, of the installments paid on or before the last day prescribed for such payment. No underpayment shall be deemed to exist with respect to [a declaration or] **an** installment otherwise due on or after the taxpayer's death.

(2) No addition to tax shall 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 lesser of:

(A) The amount which would have been required to be paid on or before such date if the estimated tax were[:

(i) the tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of twelve months, or

(ii)] an amount equal to the tax computed, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year; or

(B) An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid.

* * *

(f) (1) Any person required under the provisions of section 317 to furnish a statement to an employe who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section 317 and the regulations prescribed thereunder, shall, for each such failure, be subject to a penalty of fifty dollars (\$50) for each employe.

(2) **Any person required by regulation to furnish an information return who furnishes a false or fraudulent return shall for each failure be subject to a penalty of fifty dollars (\$50).**

(3) **Every Pennsylvania S corporation required to file a return with the department under the provisions of section 330.1 who furnishes a false or fraudulent return or who fails to file the return in the manner and at the time required under section 330.1 shall be subject to a penalty of \$250 for each failure.**

* * *

(i) If any individual, estate or trust files what purports to be a return required under section 330 but which does not contain information on which the substantial correctness of the self-assessment may be judged, or contains information that on its face indicates that the self-assessment is substantially incorrect and the self-assessment is due to a position which is frivolous or due to a desire (which appears on the purported return) to delay or impede the administration of Pennsylvania Income Tax laws, then such individual, estate or trust shall pay a penalty of five hundred dollars (\$500). The penalty imposed by this subsection shall be in addition to any other penalty provided by law.

Section 16. Section 401(3)1(b), 2(a)(18) and 4(a) of the act, amended September 9, 1971 (P.L.437, No.105), December 23, 1983 (P.L.370, No.90) and July 1, 1985 (P.L.78, No.29), are amended and subclause 1 is amended by adding a paragraph 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. * * *

(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, an additional deduction 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.**

(b.1) An additional deduction shall be allowed from taxable income in the amount of any interest income from securities issued by the United States or agencies or instrumentalities thereof, to the extent included in Federal taxable income but exempt from the tax imposed by this article under the laws of the United States, but reduced by any interest on indebtedness incurred to carry the securities, any expenses incurred in the production of such interest income and any other expenses deducted on the Federal income tax return that would not have been allowed under section 265 of the Internal Revenue Code of 1986 (26 U.S.C. § 265) if the interest were exempt from Federal income tax.

* * *

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 1954, as amended, 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.

* * *

(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.**

* * *

4. (a) For taxable years beginning in 1982 [and thereafter] **through taxable years beginning in 1990**, a net loss deduction shall be allowed from taxable income as arrived at under subclause 1 or, if applicable, subclause 2. **For taxable years beginning in 1991 and thereafter, the net loss deduction allowed for years prior to 1991 shall be suspended, and no carryover of net losses from taxable years 1988, 1989 and 1990 shall be utilized in calculating net income.**

* * *

Section 17. Section 402 of the act, amended July 2, 1986 (P.L.318, No.77), is amended to read:

Section 402. Imposition of Tax.--Every corporation shall be subject to, and shall pay for the privilege of (i) doing business in this Commonwealth; or (ii) carrying on activities in this Commonwealth; (iii) having capital or property employed or used in this Commonwealth; or (iv) owning property in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association, or corporation, a State excise tax at the rate of twelve per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1971 and the first six months of 1972 and at the rate of eleven per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the second six months of calendar year 1972 through the calendar year 1973 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by, and accruing to, such corporation during the calendar year 1977 through the calendar year 1984 and at the rate of nine and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1985 through calendar year 1986 and at the rate of eight and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1987 **through the calendar year 1990 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1991 and during each calendar year thereafter, with an additional surtax equal to one and seventy-five hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1991 and during each calendar year thereafter**, except where a corporation reports to the Federal Government on the basis of a fiscal year,

and has certified such fact to the department as required by section 403 of this article, in which case, such tax, at the rate of twelve per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the first six months of the fiscal year commencing in the calendar year 1972 and at the rate of eleven per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the second six months of the fiscal year commencing in the calendar year 1972 and during the fiscal year commencing in the calendar year 1973 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar years 1974, 1975 and 1976 and at the rate of ten and one-half per cent, shall be levied, collected, and paid upon all taxable income received by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1977 through the fiscal year commencing in 1984 and at the rate of nine and one-half per cent, shall be levied, collected, and paid upon all taxable income received by and accruing to such corporation during the fiscal year commencing in 1985 through the fiscal year commencing in 1986 and at the rate of eight and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1987 **through the fiscal year commencing in 1990 and at the rate of ten and one-half per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1991 and during each fiscal year thereafter, with an additional surtax equal to one and seventy-five hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the fiscal year commencing in 1991 and during each fiscal year thereafter.** No penalty prescribed by subsection (e) of section 3003 shall be assessed against a corporation for the additional tax which may be due as a result of the increase in tax rate from nine and one-half per cent to ten and one-half per cent imposed retroactively by this section for the calendar year 1977 or for the fiscal year commencing in 1977.

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

Section 402.1. Allocation of Tax.--For the calendar year beginning January 1, 1992, and for each calendar year through and including the calendar year beginning January 1, 1995, the Secretary of the Budget shall annually transfer seventy million dollars (\$70,000,000) from revenues received under this article to the Industrial Development Fund, with seventeen and one-half million dollars (\$17,500,000) being transferred by April 15, June 15, September 15 and December 15 of each calendar year.

Section 19. Section 403(b) of the act, amended July 1, 1985 (P.L.78, No.29), is amended to read:

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

(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 [the act of March 16, 1970

(P.L.180)] **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 [act of March 16, 1970 (P.L.180)] **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 [thereafter] **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 pursuant 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.**

* * *

Section 20. Section 407 of the act, amended September 9, 1971 (P.L.437, No.105), December 3, 1975 (P.L.476, No.140) and December 21, 1977 (P.L.330, No.98) and repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 407. Settlement and Resettlement.--(a) All taxes due under this article shall be settled by the department, and such settlement shall be subject to audit and approval by the Department of the Auditor General, and shall, so far as possible, be made so that notice thereof may reach the taxpayer within eighteen months after the tax report was required to be made. **The Secretary of Revenue, after consultation with the Auditor General, may develop and implement procedures for the settlement of taxes employing, among other means, automatic data processing, statistical analysis, computer analysis, mechanical handling and issuance of settlement documents, including documents without original signatures, such that will facilitate what he determines to be the most efficient and productive use of the resources within his control required to adequately and reasonably ensure the proper collection of taxes. The Secretary of Revenue shall provide documentation of such procedures to the chairmen of the Appropriations Committee and the Finance Committee of the Senate and of the House of Representatives.**

(b) If, within a period of [one year] **three years** after the date of any settlement, the department is not satisfied with such settlement, or if at any time the net income as returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States with the result that tax, in addition to the amount paid, is due under this article, the department is hereby authorized and empowered to make a resettlement of the tax due by such corporation, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.

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 settlement, 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.

(c) Promptly after the date of any such settlement, the department shall send, by mail or otherwise, a copy thereof to such corporation. The tax, interest, and penalty imposed by this article shall be subject to the right of resettlement, review, and refund within the time and in the manner now or hereafter provided for by law for petitions for resettlement, review and refund and to the right of appeal in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

(d) If any corporation shall neglect or refuse to make any report and payment of tax required by this article, the department shall estimate the tax due by such corporation and subject to audit and approval by the Department of the Auditor General, settle the amount due by it for taxes, penalties, and interest thereon as prescribed herein, from which settlement there shall be no right of review or appeal, but the department, with the approval of the Department of the Auditor General, may require a report to be filed, and thereupon make a settlement based upon such report and cancel the estimated settlement.

(e) If any taxpayer, pursuant to petition or appeal, is granted a resettlement or issued an order of court or a judgment basing the taxpayer's tax for any taxable year upon the principles of multifirmity or unrelated assets resulting from a final decision upon the taxpayer's petition or appeal, or any stipulation for judgment in settlement of litigation thereon, then any taxable year of the taxpayer within a three-year period prior to the taxable year in issue or any taxable year thereafter may be resettled consistent with such principles within one year of such resettlement, order of court or judgment.

Section 21. The definition of "capital stock value" in section 601(a) of the act, amended July 13, 1987 (P.L.317, No.58), is amended to read:

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

* * *

"Capital stock value." The amount computed pursuant to the following formula: the product of one-half times the sum of the average net income capitalized at the rate of nine and one-half per cent plus seventy-five per cent of net worth, from which product shall be subtracted [one hundred thousand dollars (\$100,000)] **fifty thousand dollars (\$50,000)**, the algebraic equivalent of which is

$$(.5 \times (\text{average net income} / .095 + (.75) (\text{net worth}))) - [\$100,000] \text{ } \mathbf{\$50,000}$$

* * *

Section 22. Section 602 of the act, amended December 23, 1983 (P.L.360, No.89), December 23, 1983 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), December 19, 1985 (P.L.356, No.102) and July 13, 1987 (P.L.317, No.58) and repealed in part October 18, 1988 (P.L.756, No.108), is amended to read:

Section 602. Imposition of Tax.--(a) That every domestic entity from which a report is required under section 601 hereof, shall be subject to, and pay to the department annually, a tax which is the greater of (i) [seventy-five dollars (\$75)] **three hundred dollars (\$300)** or (ii) the amount computed at the rate of ten mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1971 and the fiscal year beginning in 1971 through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1987 and fiscal years beginning in 1987 [and], at the rate of nine and one-half mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1988 and fiscal years beginning in 1988 **through calendar year 1990 and fiscal years beginning in 1990 and at the rate of eleven mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and fiscal years beginning in 1991** and each year thereafter, **with an additional surtax equal to two mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and fiscal years beginning in 1991 and with an additional surtax equal to one and three-quarters mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter**, except that any domestic entity or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602: Provided, That, except for the imposition of the [seventy-five dollar (\$75)] **three hundred (\$300)** minimum tax, the provisions of this section shall not apply to the taxation of the capital stock of entities organized for manufacturing, processing, research or development purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, processing, research or development within the State, except such entities as enjoy and exercise the right of eminent domain, but every entity organized for the purpose of manufacturing, processing, research or development except such entities as enjoy and exercise the right of eminent domain shall pay the State tax of the greater of (i) [seventy-five dollars (\$75)] **three hundred (\$300)** or (ii) the amount computed at the rate of ten mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1971 and the fiscal year beginning in 1971 through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1987 and fiscal years beginning in 1987 and at the rate of nine and one-half mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1988 and fiscal years beginning in 1988 **through calendar year 1990 and fiscal years beginning in 1990 and at the rate of eleven mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and each year thereafter, with an additional surtax equal to two mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and fiscal years beginning in 1991 and with an additional surtax equal to one and three-quarters mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter**, upon such proportion of its capital stock, if any,

as may be invested in any property or business not strictly incident or appurtenant to the manufacturing, processing, research or development business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this provision to relieve from State taxation, except for imposition of the [seventy-five dollar (\$75)] **three hundred dollar (\$300)** minimum tax under this section, only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business.

(b) (1) Every foreign entity from which a report is required under section 601 hereof, shall be subject to and pay to the department annually, a franchise tax which is the greater of (i) [seventy-five dollars (\$75)] **three hundred dollars (\$300)** or (ii) the amount computed at the rate of ten mills for the calendar year 1971 and the fiscal years beginning in 1971 through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills for the calendar year 1987 and for fiscal years beginning in 1987 [and], at the rate of nine and one-half mills for calendar year 1988 and fiscal years beginning in 1988 **through calendar year 1990 and fiscal years beginning in 1990 and at the rate of eleven mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and fiscal years beginning in 1991 and each year thereafter, with an additional surtax equal to two mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1991 and fiscal years beginning in 1991 and with an additional surtax equal to one and three-quarters mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter,** upon a taxable value to be determined in the following manner. The capital stock value shall be ascertained in the manner prescribed in section 601(a) of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: Provided, That the manufacturing, processing, research and development exemptions contained under section 602(a) shall also apply to foreign corporations and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth. Any foreign corporation, joint-stock association, limited partnership or company subject to the tax prescribed herein may elect to compute and pay its tax under section 602(a): Provided, That any foreign corporation, joint-stock association, limited partnership or company electing to compute and pay its tax under section 602(a) shall be treated as if it were a domestic corporation for the purpose of determining which of its assets are exempt from taxation and for the purpose of determining the proportion of the value of its capital stock which is subject to taxation.

(2) The provisions of this article shall apply to the taxation of entities organized for manufacturing, processing, research or development purposes, but shall not apply to such entities as enjoy and exercise the right of eminent domain.

[(c) Any entity subject to a tax imposed by this article shall be permitted to elect an alternative capital stock value, which shall be used in lieu of the capital stock value defined in section 601(a) for purposes of subsections (a) and (b) hereof, for calendar years 1984, 1985 and 1986, and for fiscal years beginning in 1984, 1985 and 1986. The election shall be

available to all entities, subject to the limitations of this subsection and shall be available for each such year without regard to whether the alternative capital stock value was elected in any other year. For the calendar year 1984 and fiscal years beginning in 1984, the alternative capital stock value shall be one hundred and thirty per cent of the value of such entity's capital stock as was settled by the department prior to any apportionment or exemption for the calendar year 1982 or the fiscal year beginning in 1982. For the calendar year 1985 and fiscal years beginning in 1985, the alternative capital stock value shall be one hundred and thirty per cent of the value of such entity's capital stock as was settled by the department prior to any apportionment or exemption for the calendar year 1983 or the fiscal year beginning in 1983. For the calendar year 1986 and fiscal years beginning in 1986, the alternative capital stock value shall be one hundred and thirty per cent of such entity's capital stock value as was settled by the department prior to any apportionment or exemption for the calendar year 1984 or the fiscal year beginning in 1984: Provided, That in no case shall the tax due using the alternative capital stock value be reduced more than five hundred dollars (\$500) from that obtained by using the formula set forth in section 601(a), and in no case shall the tax due be less than seventy-five dollars (\$75). The election to use the alternative capital stock value for the calendar year 1984 and fiscal years beginning in 1984 shall be limited to those entities which were subject to a tax imposed by this article for the calendar year 1982 or fiscal years beginning in 1982, the election of the alternative capital stock value for the calendar year 1985 and fiscal years beginning in 1985 shall be limited to entities which were subject to a tax imposed by this article for the calendar year 1983 or fiscal years beginning in 1983 and the election to use the alternative capital stock value for the calendar year 1986 and fiscal years beginning in 1986 shall be limited to those entities which were subject to a tax imposed by this article for the calendar year 1984 or fiscal years beginning in 1984. The Secretary of Revenue is hereby directed to undertake a study of the incidence of the fixed-formula tax on various sizes and types of businesses which incur significantly greater tax liability under the fixed formula. The findings and conclusions of the secretary shall be submitted to the General Assembly not later than September 15, 1986.]

(d) It shall be the duty of the treasurer or other officers having charge of any domestic or foreign entity, upon which a tax is imposed by this section, to transmit the amount of tax to the department within the time prescribed by law: Provided, That for the purposes of this act interest in limited partnerships or joint-stock associations shall be deemed to be capital stock, and taxable accordingly: Provided, further, That entities liable to a tax under this section, shall not be required to pay any further tax on the mortgages, bonds, and other securities owned by them and in which the whole body of stockholders or members, as such, have the entire equitable interest in remainder; but entities owning or holding such securities as trustees, executors, administrators, guardians, or in any other manner than for the whole body of stockholders or members thereof as sole equitable owners in remainder, shall return and pay the tax imposed by this act upon all securities so owned or held by them, as in the case of individuals.

(e) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to

compute the capital stock or franchise tax by applying the rate of tax of ten mills for the calendar year 1971 and the fiscal year beginning in 1971 through the calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills for the calendar year 1987 and fiscal years beginning in 1987, at the rate of nine and one-half mills for calendar year 1988 and fiscal years beginning in 1988 **through calendar year 1990 and fiscal years beginning in 1990 and at the rate of eleven mills for calendar year 1991 and fiscal years beginning in 1991** and each year thereafter, **with an additional surtax equal to two mills for calendar year 1991 and fiscal years beginning in 1991 and with an additional surtax equal to one and three-quarters mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter**, upon each dollar to ten per cent of the capital stock value, but in no case shall the tax so computed be less than [seventy-five dollars (\$75)] **three hundred dollars (\$300)**. If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

(f) Every domestic corporation and every foreign corporation (i) registered to do business in Pennsylvania; (ii) which maintains an office in Pennsylvania; (iii) which has filed a timely election to be taxed as a regulated investment company with the Federal Government; and (iv) which duly qualifies to be taxed as a regulated investment company under the provisions of the Internal Revenue Code of 1954 as amended, shall be taxed as a regulated investment company and shall be subject to the capital stock or franchise tax imposed by section 602, in either case for the privilege of having an office in Pennsylvania, which tax shall be computed pursuant to the provisions of this subsection in lieu of all other provisions of this section 602. The tax shall be in an amount which is the **greater of three hundred dollars (\$300) or the** sum of the amounts determined pursuant to clauses (1) and (2):

(1) The amount determined pursuant to this clause shall be seventy-five dollars (\$75) times that number which is the result of dividing the net asset value of the regulated investment company by one million, rounded to the nearest multiple of seventy-five dollars (\$75). Net asset value shall be determined by adding the monthly net asset values as of the last day of each month during the taxable period and dividing the total sum by the number of months involved. Each such monthly net asset value shall be the actual market value of all assets owned without any exemptions or exclusions, less all liabilities, debts and other obligations.

(2) The amount determined pursuant to this clause shall be the amount which is the result of multiplying the rate of taxation applicable for purposes of the personal income tax during the same taxable year times the apportioned undistributed personal income tax income of the regulated investment company. For the purposes of this clause:

(A) Personal income tax income shall mean income to the extent enumerated and classified in section 303.

(B) Undistributed personal income tax income shall mean all personal income tax income other than personal income tax income undistributed on account of the capital stock or foreign franchise tax, less all personal income tax income distributed to shareholders. At the election of the company, income distributed after the close of a taxable year, but deemed distributed during the taxable year for Federal income tax purposes, shall be deemed distributed during that year for

purposes of this clause. If a company in a taxable year has both current income and income accumulated from a prior year, distributions during the year shall be deemed to have been made first from current income.

(C) Undistributed personal income tax income shall be apportioned to Pennsylvania by a fraction, the numerator of which is all income distributed during the taxable period to shareholders who are resident individuals, estates or trusts and the denominator of which is all income distributed during the taxable period. Resident trusts shall not include charitable, pension or profit-sharing, or retirement trusts.

(D) Personal income tax income and other income of a company shall each be deemed to be either distributed to shareholders or undistributed in the proportion each category bears to all income received by the company during the taxable year.

(g) In the event that a domestic or foreign entity is required to file a report pursuant to section 601(b) on other than an annual basis, the tax imposed by this section, including the [seventy-five dollars (\$75)] **three hundred dollars (\$300)** minimum tax, shall be prorated to reflect the portion of a taxable year for which the report is filed by multiplying the tax liability by a fraction equal to the number of days in the taxable year divided by three hundred sixty-five days.

Section 23. Section 602.1 of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

Section 602.1. Pollution Control Devices.--Notwithstanding the foregoing provisions of section 602, to the contrary, equipment, machinery, facilities and other [assets] **tangible property** employed or utilized within the Commonwealth of Pennsylvania for water and air pollution control or abatement devices which are being employed or utilized for the benefit of the general public shall be exempt from the tax imposed under this Article VI. The Department of Revenue shall have the power, [by regulation] **through publication in the Pennsylvania Bulletin**, to prescribe the manner and method by which such exemption shall be [claimed.] **granted and claimed.**

Section 24. Section 602.3 of the act, added July 13, 1987 (P.L.317, No.58), is amended to read:

Section 602.3. Deposit of Proceeds; Appropriation.--(a) The proceeds resulting from [the increase in the tax rate from nine mills to nine and one-half mills, effective for calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991,] **one-half mill of the tax imposed pursuant to this article as determined by the Secretary of Revenue** shall be transferred to the Hazardous Sites Cleanup Fund [which is hereby created]. **The proceeds from any taxable year beginning in 1991 resulting from one-quarter mill of the tax imposed pursuant to this article as determined by the Secretary of Revenue shall be transferred to the State Lottery Fund. The transfers required by this subsection shall be made by June 15 and December 15 of each appropriate calendar year.**

(b) The funds deposited in the Hazardous Sites Cleanup Fund **and the State Lottery Fund** are hereby appropriated out of this account upon authorization by the Governor.

Section 25. Sections 701 and 801 of the act, amended July 1, 1989 (P.L.95, No.21), are amended to read:

Section 701. Imposition of Tax.--Every bank having capital stock, incorporated by or under any law of this Commonwealth or under any law of the United States, and located within this Commonwealth, shall, on or before [April] **March** 15 in each and

every year, make to the Department of Revenue a report in writing, verified as required by law, setting forth the full number of shares of the capital stock subscribed for or issued, as of the preceding January 1, by such bank having capital stock, and the taxable amount of such shares of capital stock determined pursuant to section 701.1. It shall be the duty of the Department of Revenue to assess such shares for the calendar years beginning January 1, 1971 through January 1, 1983, at the rate of fifteen mills and for the calendar years beginning January 1, 1984 through January 1, 1988, at the rate of one and seventy-five one thousandths per cent and for the calendar year beginning January 1, 1989, at the rate of 10.77 per cent and for the calendar year beginning January 1, 1990, and each calendar year thereafter at the rate of 1.25 per cent upon each dollar of taxable amount thereof, the taxable amount of each share of stock to be ascertained and fixed pursuant to section 701.1, and dividing this amount by the number of shares. It shall be the duty of every bank having capital stock, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar [year] **years** beginning January 1, 1971[, and each year thereafter] **through January 1, 1991**, such bank having capital stock, upon the date its report, herein required is made for such calendar [year] **years** beginning January 1, 1971[, and each year thereafter] **through January 1, 1991**, shall pay to the Department of Revenue not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year, and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That in case any bank having capital stock, incorporated under the law of this State or of the United States, shall collect, annually, from the shareholders thereof said tax, according to the provisions of this article, that have been subscribed for or issued, and pay the same into the State Treasury, through the Department of Revenue, the shares, and so much of the capital and profits of such bank having capital stock as shall not be invested in real estate, shall be exempt from local taxation under the laws of this Commonwealth; and such bank having capital stock shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation and shall not be required to pay any tax thereon.

Section 801. Imposition of Tax.--Every company incorporated under the provisions of section 29 of an act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, 1874, and its supplements, or any other act of Assembly heretofore or hereafter approved, for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens, and encumbrances, and every company entitled to benefits of, and every company having any of the powers of, companies entitled to the benefits of an act, entitled "An act conferring upon certain fidelity, insurance, safety deposit, trust, and savings companies, the powers and privileges of companies incorporated under the provisions of section 29 of an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, and of the supplements thereto," approved June 27, 1895, commonly known as title insurance or trust companies,

and every company organized as a bank and trust company or as a trust company under any act of Assembly heretofore or hereafter approved, except any such companies, all of the shares of capital stock of which (other than shares necessary to qualify directors) are owned by a company which is liable to pay to the Commonwealth a tax on shares, shall, on or before [April] **March** 15 in each and every year, make to the Department of Revenue a report in writing, setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the taxable amount of such shares of capital stock determined pursuant to section 801.1. It shall be the duty of the Department of Revenue, to assess such shares for taxation for calendar years beginning January 1, 1971 through January 1, 1983, at the rate of fifteen mills and for the calendar years beginning January 1, 1984, through January 1, 1988, at the rate of one and seventy-five one thousandths per cent and for the calendar year beginning January 1, 1989, at the rate of 10.77 per cent and for the calendar year beginning January 1, 1990, and each calendar year thereafter at the rate of 1.25 per cent upon each dollar of the taxable amount thereof, the taxable amount of each share of stock to be ascertained and fixed pursuant to section 801.1, and dividing this amount by the number of shares.

It shall be the duty of every such company, at the time of making every report required by this section, to compute the tax and to pay the amount of said tax to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders: Provided, That for the calendar [year] **years** beginning January 1, 1971[, and each year thereafter] **through January 1, 1991**, every such company shall, at the time of making its report for the calendar [year] **years** beginning January 1, 1971[, and each year thereafter] **through January 1, 1991**, compute the tax and pay to the State Treasurer, through the Department of Revenue, either from its general fund, or from the amount of said tax collected from its shareholders, not less than eighty per cent of the tax due to the Commonwealth by it for such calendar year and the remaining tax due shall be paid at the time when the report herein required for the year next succeeding is made: Provided, That upon the payment of the tax fixed by this act into the State Treasury, through the Department of Revenue, the shares and so much of the capital stock, surplus, profits, and deposits of such company as shall not be invested in real estate, shall be exempt from all other taxation under the laws of this Commonwealth. The procedure, in case the Department of Revenue be not satisfied with the report made by any title insurance or trust company, and the penalties for failing to make such report and pay the tax, shall be as provided by law.

Section 26. Section 901 of the act is amended by adding a clause to read:

Section 901. Definitions.--The following terms, when used in this act, shall have the meaning ascribed to them in this section:

* * *

(3) **"Annuity consideration"** means all sums received as consideration for annuity contracts by any insurance company, whether received in money or in the form of notes, credits or any other substitutes for money and whether collected in this Commonwealth or elsewhere. Annuity considerations shall not include:

(i) sums received in connection with the funding of a pension qualified or exempt under section 401, 403, 404, 408,

457 or 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401, 403, 404, 408, 457 or 501); or

(ii) sums received through or on behalf of the Bureau of Lottery of the Department of Revenue pursuant to the act of August 26, 1971 (P.L.351, No.91), known as the "State Lottery Law."

Section 27. Sections 902 and 903 of the act are amended to read:

Section 902. (a) Imposition of Tax.--Every insurance company, as herein defined, transacting business in the Commonwealth of Pennsylvania, shall pay to the department, a tax at the rate of two per cent of the gross premiums **and annuity considerations** received from business done within this Commonwealth during each calendar year, except that any insurance company which was not subject to this tax prior to 1971 shall be taxed at the rate of one per cent for the year 1971 and thereafter at the rate of two per cent.

(b) Disposition of Taxes.--The taxes paid by foreign fire insurance companies under this act shall continue to be distributed and used for firemen's relief pension or retirement purposes, as provided by section two of the act, approved the twenty-eighth day of June, one thousand eight hundred ninety-five (Pamphlet Laws 408), as amended; and the taxes paid by foreign casualty insurance companies under this act shall continue to be distributed and used for police pension, retirement or disability purposes as provided by the act, approved the twelfth day of May, one thousand nine hundred forty-three (Pamphlet Laws 259), as amended.

All other taxes received under this act shall be credited to the General Fund for general revenue purposes.

Section 903. Annual Report.--Every insurance company shall make a report to the department on a form prescribed by it on or before April 15 of each year, showing the gross premiums **and annuity considerations** received from business transacted in the Commonwealth during the year ending December 31 preceding. When making such report, the insurance company shall compute and pay to the Commonwealth the tax upon the gross premiums **and annuity considerations** received from business transacted within this Commonwealth during such preceding year.

Section 28. Section 1101(a) and (c) of the act, amended July 13, 1987 (P.L.317, No.58), are amended to read:

Section 1101. Imposition of Tax.--(a) General Rule.--Every railroad company, pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any railroad, pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except taxicabs, motor buses and motor omnibuses, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company, express company, gas company, palace car company and sleeping car company, now or

hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone, telegraph, express, [gas,] palace car or sleeping car business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of [forty-four] **forty-five** mills **with a surtax equal to five mills** upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from passengers, baggage, and freight transported wholly within this State, from telegraph or telephone messages transmitted wholly within this State, from express, palace car or sleeping car business done wholly within this State, or from the sales of gas **to the public from a public utility**, except gross receipts derived from sales to any municipality owned or operated public utility and except gross receipts derived from the sales for resale, to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale and from the transportation of oil done wholly within this State. The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas.

* * *

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

* * *

Section 29. Article XI of the act is amended by adding a part to read:

PART IV

DEFINITIONS

Section 1104. Definitions.--As used in this article:

"Gas companies." Only those gas companies whose rates and conditions of service are regulated by the Pennsylvania Public Utility Commission.

Section 30. Section 1102-A(a) of the act, amended July 21, 1983 (P.L.63, No.29), is amended to read:

Section 1102-A. Imposition of Tax; Report; Interest and Penalties.--(a) On or before the first day of June of 1970 and of each year thereafter until and including June 1, 1983, every public utility shall pay to the State Treasurer, through the Department of Revenue, a tax at the rate of thirty mills upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year.

(1) On or before April 15, 1984, for tax year 1983, every public utility shall report tax liability at the rate of thirty mills upon each dollar of the State taxable value of its utility realty at the end of calendar year 1983 and shall pay such tax on or before June 1, 1984.

(2) On or before April 15, 1984, and each year thereafter, every public utility shall report tentative tax liability for the current tax year equal to ninety per cent of the tax liability of the immediate prior year, and **until December 31, 1991**, pay twenty-five per cent of such amount on April 15, June 15, September 15 and December 15 of each year. **For tax years beginning with 1992 and each year thereafter, said tentative tax shall be paid on April 15 of each year.**

(3) On or before April 15, 1985, and every year thereafter, every public utility shall pay the remaining portion, if any, of the thirty mills tax due upon each dollar of the State taxable value of its utility realty at the end of the preceding calendar year, after accounting for any tentative tax payments made pursuant to this act.

* * *

Section 31. The definitions of "cigarette stamping agency" and "wholesaler" in section 1201 of the act, added December 21, 1981 (P.L.482, No.141), are amended to read:

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

* * *

"Cigarette stamping agency." Any person, as defined in this article, who shall be licensed as such by the department for the purpose of affixing cigarette tax stamps to packages of cigarettes and transmitting the proper tax to the Commonwealth, and who maintains separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, who have received commitments from at least two cigarette manufacturers whose aggregate market share is at least forty per cent of the Commonwealth cigarette market and purchases cigarettes directly from cigarette manufacturers.

* * *

"Wholesaler." Any person, other than a cigarette stamping agent, who:

(1) [Any person who, in] **In the usual course of business, sells [cigarettes] within this Commonwealth at least seventy-five per cent of all such cigarettes purchased by him or her to retail dealers, other wholesale dealers, or any other persons who shall buy said cigarettes from him or her for the purpose of resale to the ultimate consumer; Provided That such person maintains [an established place of business] a separate warehousing facility for the receiving, storage and distribution of cigarettes.**

(2) [Any person who is] **Is** engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing said cigarette vending machine, owned or leased by them, in various outlets within the Commonwealth, and who shall pay to the owner or lessee of the premises a commission or rental for the use of said premises: Provided, however, That such vending machine operator shall operate at least ten vending machines: And further provided, That said vending machine operator shall meet all of the other requirements for licensing of wholesalers under this article, including maintaining an established place of business for the **receiving**, storage and distribution of cigarettes.

(3) [Any person who owns] **Owns** and operates no less than five stores which are retail outlets **having one hundred per cent common ownership**, and who purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer: Provided, That such person maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.

Section 32. Section 1206 of the act, added December 21, 1981 (P.L.482, No.141), is amended to read:

Section 1206. Incidence and Rate of Tax.--An excise tax is hereby imposed and assessed upon the sale or possession of cigarettes within this Commonwealth at the rate of [nine-tenths] **one and fifty-five hundredths** of a cent per cigarette.

Section 33. The act is amended by adding a section to read:

Section 1206.1. Floor Tax.--Any person who possesses cigarettes on which the tax imposed by section 1206 of this article has been paid as of the effective date of this section shall pay an additional tax at a rate of sixty-five hundredth cents per cigarette. The tax shall be reported and paid on a form prescribed by the department. In addition to the interest and penalties provided in section 1278 of this article, failure to file said report and pay said tax within sixty days of the effective date of this section may result in a penalty of two hundred fifty dollars (\$250). This penalty shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.

Section 34. Section 1221 of the act is amended by adding a subsection to read:

Section 1221. Licensing of Cigarette Dealers.--* * *

(c) Any person who is a wholesaler pursuant to section 1201 of this article shall be required to obtain a wholesale license.

Section 35. Sections 1222, 1223, 1224, 1227, 1278(c), 1285(c) and 1296 of the act, added December 21, 1981 (P.L.482, No.141), are amended to read:

Section 1222. Licensing of Cigarette Stamping Agents.--(a) The department may license as its agent for a one year period (and may renew said license for further periods of one year) any person of good moral character who shall meet the requirements imposed by the following provisions for the privilege of operating as a cigarette stamping agency:

(1) Said applicant shall be a wholesale cigarette dealer licensed by the Commonwealth of Pennsylvania.

[(2) The premises in which said applicant proposes to conduct his or her business are adequate to protect the revenue.]

(2) The applicant maintains separate warehousing facilities, adequate to protect the revenue, for the purpose of receiving, storing and distributing cigarettes and conducting their business and has received commitments from at least two

cigarette manufacturers whose aggregate market share is at least forty per cent of the Commonwealth's cigarette market.

(3) The said applicant is a person of good moral character, of reasonable financial stability and reasonably experienced in the wholesale cigarette business.

(4) The applicant, or any shareholder controlling more than ten per cent of the stock if said applicant is a corporation or any officer or director if said applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(5) The applicant shall have filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan.

(b) The department shall, by regulation, prescribe the form, content and manner of said application by which the licensing of a cigarette stamping agency shall be made.

(c) Said cigarette stamping agency license shall be valid for one specific location only.

(d) The department may reject any application for a new or renewal license whenever it shall find that any of the aforementioned requirements have not been met, or shall find that such applicant or licensee has (i) failed to disclose any material information required; (ii) has made any material false statement in his application; (iii) has violated any provision of this article[.] **or the act of May 20, 1949 (P.L.1584, No.478), known as the "Unfair Cigarette Sales Act."**

(e) For purposes of this section, a person convicted of committing any felony, any infamous crime or any crime involving moral turpitude shall not be a "person of good moral character" and shall not be licensed as a cigarette stamping agent.

Section 1223. Licensing of Wholesalers.--Applicants for a wholesale license or renewal thereof shall meet the following requirements:

(1) The premises on which said applicant proposes to conduct his or her business are adequate to protect the revenue.

(2) Said applicant is a person of reasonable financial stability and reasonable business experience. The applicant or any shareholder controlling more than ten per cent of the stock, if the applicant is a corporation or any officer or director if said applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(3) Said applicant shall not have failed to disclose any material information required by the department, **including information that the applicant has complied with the act of May 20, 1949 (P.L.1584, No.478), known as the "Unfair Cigarette Sales Act," by providing a signed statement, under penalty of perjury, of adherence to State presumptive minimum prices or approval to sell at a different price in accordance with the act.**

(4) Said applicant shall not have made any material false statement in his application.

(5) Said applicant shall not have violated any provision of this article.

(6) The wholesale dealer's license shall be valid for one specific location only.

(7) Said applicant shall have filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan.

Section 1224. Licensing of Retailers.--Applicant for retail license or renewal thereof shall meet the following requirements:

(1) The premises in which said applicant proposes to conduct his business are adequate to protect the revenues.

(2) Said applicant shall not have failed to disclose any material information required by the department, **including information that the applicant has complied with the act of May 20, 1949 (P.L.1584, No.478), known as the "Unfair Cigarette Sales Act," by providing a signed statement, under penalty of perjury, of adherence to State presumptive minimum prices or approval to sell at a different price in accordance with the act.**

(3) Said applicant shall not have any material false statement in his application.

(4) Said applicant shall not have violated any provision of this article.

(5) **Said applicant shall have filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan.**

Section 1227. License Fees; Issuance and Posting of License.--(a) At the time of making any application, an applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of [two hundred fifty dollars (\$250)] **five hundred dollars (\$500)**, an applicant for a retail cigarette dealer's license shall pay to the department a license fee of [five dollars (\$5)] **twenty-five dollars (\$25)**, an applicant for a vending machine license shall pay to the department a license fee of [five dollars (\$5)] **twenty-five dollars (\$25)**, an applicant for a cigarette stamping agency license, shall pay to the department a fee of [five hundred dollars (\$500)] **one thousand dollars (\$1,000)**.

(b) Upon approval of the application and payment of the fees, the department shall issue the proper license which must be conspicuously displayed at the place for which issued.

(c) **One-half of all fees received by the department under this section shall be restricted for implementation of section 1273 and statutory provisions on unfair cigarette sales, including enforcement and audit.**

Section 1278. Other Violations.--* * *

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

Section 1285. Property Rights.--* * *

(c) No property rights shall exist in any packages of cigarettes which have been taken from any person who has been found in violation of the provisions of section 1273 **or any cigarettes sold or offered for sale by any person without a proper license or any cigarettes sold or offered for sale by any person not possessing proper documentation showing legal purchase of said cigarettes** and all such packages of cigarettes

shall be deemed contraband, shall be confiscated and shall be forfeited to the Commonwealth without further proceedings and shall be delivered to the agents of the department at the time of conviction by the judge, justice of the peace, magistrate or alderman.

* * *

Section 1296. Disposition of Certain Funds.--All cigarette tax revenues collected by the Department of Revenue under this article and heretofore paid into the Parent Reimbursement Fund in accordance with the act of August 27, 1971 (P.L.358, No.92), known as the "Parent Reimbursement Act for Nonpublic Education," shall be transferred into the General Fund[, and all such revenues hereinafter collected]. **Beginning July 1, 1993, two thirty-firsts of cigarette tax receipts shall be transferred into the Agricultural Conservation Easement Purchase Fund, and beginning July 1, 1992, two thirty-firsts of cigarette tax receipts shall be paid into a restricted account to be known as the Children's Health Fund for health care for indigent children, and the remainder shall be paid into the General Fund. Moneys in the Children's Health Fund shall not be expended until the enactment of legislation to implement a program of expanded access to health care for children. The transfers required by this section shall be made by July 15 for the preceding six months and by January 15 for the preceding six months.**

Section 36. The act is amended by adding an article to read:

**ARTICLE XXI
INHERITANCE TAX
PART I**

PRELIMINARY PROVISIONS

Section 2101. Short Title.--This article shall be known and may be cited as the "Inheritance and Estate Tax Act."

Section 2102. Definitions.--The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Adverse interest." A substantial beneficial interest in the property transferred which might be adversely affected by the exercise or nonexercise of the power or right reserved or possessed by the transferor.

"Children." Includes natural children whether or not they have been adopted by others, adopted children and stepchildren.

"Clerk." The clerk of the orphans' court division of the court of common pleas having jurisdiction.

"Court." The orphans' court division of the court of common pleas of:

(1) The county in which the decedent resided at the time of his death.

(2) The county in which letters, if any, are granted if the decedent was a nonresident of this Commonwealth.

(3) Dauphin County in all other cases.

"Date of death." The date of actual death or, in the case of a presumed decedent, the date found by the final decree to be the date of the absentee's presumed death. For the purpose of determining interest and discount, "date of death" means the date upon which the court enters its final decree of presumptive death.

"Death taxes." Includes inheritance, succession, transfer and estate taxes and any other taxes levied against the estate of a decedent by reason of his death.

"Decedent" or "transferor." Any person by or from whom a transfer is made and includes any testator, intestate, grantor, settlor, bargainor, vendor, assignor, donor, joint tenant and insured.

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

"Exemption income." All moneys or property, including, without limitation, interest, gains or income derived from obligations which are statutorily free from State or local taxation under any other Federal or State laws, received of whatever nature and from whatever source derived.

"Financial institution." A bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union, a savings bank and a company that rents safe deposit boxes.

"Future interest." Includes a successive life interest and a successive interest for a term certain.

"Lineal descendants." All children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

"Notice." Written notice.

"Presumed decedent." A person found to be presumptively dead under the provisions of 20 Pa.C.S. Ch. 57 (relating to absentees and presumed decedents) or, if a nonresident of this Commonwealth, under the laws of his domicile.

"Property" or "estate." Includes the following:

(1) All real property and all tangible personal property of a resident decedent or transferor having its situs in this Commonwealth.

(2) All intangible personal property of a resident decedent or transferor.

(3) All real property and all tangible personal property of a resident decedent having its situs outside this Commonwealth, which the decedent had contracted to sell, provided the jurisdiction in which the property has its situs does not subject it to death tax.

(4) All real property and all tangible personal property of a nonresident decedent or transferor having its situs in this Commonwealth, including property held in trust.

(5) A liquor license issued by the Commonwealth.

"Register." The register of wills having jurisdiction to grant letters testamentary or of administration in the estate of the decedent or transferor.

"Safe deposit box of a decedent." A safe deposit box in a financial institution located within this Commonwealth in the name of the decedent alone or in the names of the decedent and one or more persons other than the spouse of the decedent.

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

"Territory." Includes the District of Columbia and all possessions of the United States.

"Transfer." Includes the passage of ownership of property, or interest in property or income from property, in possession or enjoyment, present or future, in trust or otherwise.

"Transferee." Any person to whom a transfer is made and includes any legatee, devisee, heir, next of kin, grantee, beneficiary, vendee, assignee, donee, surviving joint tenant and insurance beneficiary.

"Value." The price at which the property would be sold by a willing seller, not compelled to sell, to a willing buyer,

not compelled to buy, both of whom have reasonable knowledge of the relevant facts. In determining the value of property, no reduction shall be made on account of income, excise or other taxes which may become payable subsequent to the valuation date by the transferee or out of the property. Value as to land in agricultural use, agricultural reserve or forest reserve means the value which the land has for its particular use according to the standards provided in section 2122.

Section 2103. Powers of Department.--(a) The department may adopt and enforce rules and regulations for the just administration of this article.

(b) The department shall have complete supervision of the making of appraisements, the allowance of deductions and the assessment of tax, including, but not limited to, the power to regulate the actions of registers in the allowance and disallowance of deductions and assessment of tax. The department's supervision of the making of appraisements includes the employment and compensation of investigators, appraisers and expert appraisers. The compensation of investigators, appraisers and expert appraisers shall be paid from the inheritance tax collections in the respective counties.

(c) The department shall, in the event that the register fails to take the necessary proceedings in connection with the appraisement, allowance of deductions, assessment of tax or collection of tax, have all the powers vested in the register in this article and, at its option, may take the necessary action and shall charge to the register and deduct from any commissions or fees otherwise due him all costs and expenses incurred by the department in connection with the proceedings.

PART II

TRANSFERS SUBJECT TO TAX

Section 2106. Imposition of Tax.--An inheritance tax for the use of the Commonwealth is imposed upon every transfer subject to tax under this article at the rates specified in section 2116.

Section 2107. Transfers Subject to Tax.--(a) The transfers enumerated in this section are subject to the tax imposed by section 2106.

(b) All transfers of property by will, by the intestate laws of this Commonwealth or, in the case of a transfer from a nonresident, by the laws of succession of another jurisdiction are subject to tax. The transfer of property of a person determined by decree of a court of competent jurisdiction to be a presumed decedent is subject to tax within the meaning of this section and section 2108.

(c) (1) All transfers of property specified in subclauses (3) through (7) which are made by a resident or a nonresident during his lifetime are subject to tax to the extent that they are made without valuable and adequate consideration in money or money's worth at the time of transfer.

(2) When the decedent retained or reserved an interest or power with respect to only a part of the property transferred, in consequence of which a tax is imposed under subclauses (4) through (7), the amount of the taxable transfer is only the value of that portion of the property transferred which is subject to the retained or reserved interest or power.

(3) A transfer conforming to subclause (1) and made within one year of the death of the transferor is subject to tax only to the extent that the value at the time of the transfer or transfers in the aggregate to or for the benefit of the

transferee exceeds three thousand dollars (\$3,000) during any calendar year.

(4) A transfer conforming to subclause (1) which takes effect in possession or enjoyment at or after the death of the transferor and under which the transferor has retained a reversionary interest in the property, the value of which interest immediately before the death of the transferor exceeds five per cent of the value of the property transferred, is subject to tax. The term "reversionary interest" includes a possibility that property transferred may return to the transferor or his estate or may be subject to a power of disposition by him, but the term does not include a possibility that the income alone from the property may return to him or become subject to a power of disposition by him.

(5) A transfer conforming to subclause (1), and under which the transferor expressly or impliedly reserves for his life or any period which does not in fact end before his death, the possession or enjoyment of, or the right to the income from, the property transferred, or the right, either alone or in conjunction with any person not having an adverse interest, to designate the persons who shall possess or enjoy the property transferred or the income from the property, is subject to tax.

(6) A transfer conforming to subclause (1), and under which the transferee promises to make payments to, or for the benefit of, the transferor or to care for the transferor during the remainder of the transferor's life, is subject to tax.

(7) A transfer conforming to subclause (1), and under which the transferor has at his death, either in himself alone or in conjunction with any person not having an adverse interest, a power to alter, amend or revoke the interest of the beneficiary, is subject to tax. Similarly, the relinquishment of such a power within one year of the death of the transferor is a transfer subject to tax except as otherwise provided in subclause (3).

Section 2108. Joint Tenancy.--(a) When any property is held in the names of two or more persons or is deposited in a financial institution in the names of two or more persons so that, upon the death of one of them, the survivor or survivors have a right to the immediate ownership or possession and enjoyment of the whole property, the accrual of such right, upon the death of one of them, shall be deemed a transfer subject to tax of a fractional portion of such property to be determined by dividing the value of the whole property by the number of joint tenants in existence immediately preceding the death of the deceased joint tenant.

(b) Except as provided in subsection (c), this section shall not apply to property and interests in property passing by right of survivorship to the survivor of husband and wife.

(c) If the co-ownership was created within one year prior to the death of the co-tenant, the entire interest transferred shall be subject to tax only under, and to the extent stated in, subsection (c)(3) of section 2107 as though a part of the estate of the person who created the co-ownership.

PART III

TRANSFERS NOT SUBJECT TO TAX

Section 2111. Transfers Not Subject to Tax.--(a) The transfers enumerated in this section are not subject to the tax imposed by this article.

(b) Transfers of property to or for the use of any of the following are exempt from inheritance tax:

(1) The United States of America.

(2) The Commonwealth of Pennsylvania.

(3) A political subdivision of the Commonwealth of Pennsylvania.

(c) Transfers of property to or for the use of any of the following are exempt from inheritance tax:

(1) Any corporation, unincorporated association or society organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation.

(2) Any trustee or trustees or any fraternal society, order or association operating under the lodge system, but only if the property transferred is to be used by the trustee or trustees or by the fraternal society, order or association exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, and no substantial part of the activities of the trustee or trustees or of the fraternal society, order or association is carrying on propaganda or otherwise attempting to influence legislation.

(3) Any veterans' organization incorporated by act of Congress or its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) All proceeds of insurance on the life of the decedent are exempt from inheritance tax. Refunds of unearned premiums for the current policy period and post mortem dividends shall be considered exempt proceeds.

(e) All proceeds of any Federal War Risk Insurance, National Service Life Insurance or similar governmental insurance are exempt from inheritance tax. Refunds of unearned premiums for the current policy period and post mortem dividends shall be considered exempt proceeds.

(f) The pay and allowances determined by the United States to be due a member of its armed forces for service in the Vietnam conflict after August 5, 1964, for the period between the date declared by it as the beginning of his missing-in-action status to the date determined by it to be the date of his death, are exempt from inheritance tax.

(g) Inter vivos transfers as defined in subsection (c) of section 2107 which might otherwise be subject to inheritance tax are exempt where the transferee is a governmental body as provided in subsection (b) or a charity as provided in subsection (c).

(h) Intangible personal property held by, for or for the benefit of a decedent who, at the time of his death, was a nonresident is exempt from inheritance tax.

(i) A transfer made as an advancement of or on account of an intestate share or in satisfaction or partial satisfaction of a gift by will, but not within the meaning of subsection (c)(3) of section 2107, is exempt from inheritance tax.

(j) Adjusted service certificates issued under the act of Congress of May 19, 1924, and adjusted service bonds issued under the act of Congress of January 27, 1936, are exempt from inheritance tax.

(k) Property subject to a power of appointment, whether or not the power is exercised, and notwithstanding any blending

of such property with the property of the donee, is exempt from inheritance tax in the estate of the donee of the power of appointment.

(l) Property awarded to the Commonwealth as statutory heir by escheat or without escheat, otherwise than as custodian for a known distributee, is exempt from inheritance tax. Inheritance tax shall be deducted at the applicable rate without interest from any such exempt funds thereafter distributed by the Commonwealth.

(m) Property owned by husband and wife with right of survivorship is exempt from inheritance tax. If the ownership was created within the meaning of section 2107(c)(3), the entire interest transferred shall be subject to tax under section 2107(c)(3) as though a part of the estate of the spouse who created the co-ownership.

(n) Property held in the name of a decedent who had no beneficial interest in the property is exempt from inheritance tax.

(o) Obligations owing to the decedent which are worthless immediately before death are exempt from inheritance tax although collectible from the obligor's distributive share of the estate.

(p) The lump-sum death payment from the Social Security Administration or Veterans' Administration or any county veterans' death benefit or other similar death benefit, whether or not paid to the decedent's estate, is exempt from inheritance tax.

(q) The lump-sum burial benefit from the United States Railroad Retirement Board, whether or not paid to the decedent's estate, is exempt from inheritance tax.

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

Section 2112. Exemption for Poverty.--(a) The General Assembly, in recognition of the powers contained in section 2(b)(ii) of Article VIII of the Constitution of Pennsylvania which provides therein for the establishing as a class or classes of subjects of taxation the property or privileges of persons who because of poverty are determined to be in need of

special tax provisions or tax exemptions, hereby declares as its legislative intent and purpose to implement such powers under such Constitutional provision by establishing a tax exemption as hereinafter provided in this section.

(b) The General Assembly, having determined that there are persons within this Commonwealth the value of whose incomes and estates are such that the imposition of an inheritance tax under this article would cause them hardship and economic burden and having further determined that poverty is a relative concept inextricably joined with the ability to maintain assets inherited upon the death of a spouse, deems it to be a matter of public policy to provide an exemption from taxation for transfers of property to or for the use of that class of persons hereinafter designated in order to relieve their hardship and economic burden.

(c) Any claim for a tax exemption hereunder shall be determined in accordance with the following:

(1) The transferee is the spouse of the decedent at the date of death of the decedent.

(2) The value of the estate of the decedent does not exceed two hundred thousand dollars (\$200,000) after reduction for actual liabilities of the decedent as evidenced by a written agreement.

(3) The average of the joint exemption income of the decedent and the transferee for the three taxable years, as defined in Article III, immediately preceding the date of death of the decedent does not exceed forty thousand dollars (\$40,000).

(d) Notwithstanding any other provision of this article, transfers of property to or for the use of any eligible transferee who meets the standards of eligibility established by this section as the test for poverty shall be deemed a separate class of subject of taxation and, as such, shall be entitled to the benefit of the following exemptions from taxation on transfers of property as a credit against the tax imposed by this article:

(1) For decedents dying on or after January 1, 1992, and before January 1, 1993, the lesser of:

(i) Two per cent of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(ii) Two per cent of one hundred thousand dollars (\$100,000) of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(2) For decedents dying on or after January 1, 1993, and before January 1, 1994, the lesser of:

(i) Four per cent of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(ii) Four per cent of one hundred thousand dollars (\$100,000) of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(3) For decedents dying on or after January 1, 1994, the lesser of:

(i) Six per cent of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(ii) Six per cent of one hundred thousand dollars (\$100,000) of the taxable value of the property of the decedent transferred to or for the use of the transferee.

(e) For nonresident decedents, the credit provided in this section shall bear the same ratio as that of the decedent's

estate in this Commonwealth bears to the decedent's total estate without regard to situs.

PART IV
RATE OF TAX

Section 2116. Inheritance Tax.--(a) (1) Inheritance tax upon the transfer of property passing to or for the use of any of the following shall be at the rate of six per cent:

(i) grandfather, grandmother, father, mother, husband, wife and lineal descendants; or

(ii) wife or widow and husband or widower of a child.

(2) Inheritance tax upon the transfer of property passing to or for the use of all persons other than those designated in subclause (1) shall be at the rate of fifteen per cent.

(3) When property passes to or for the use of a husband and wife with right of survivorship, one of whom is taxable at a rate lower than the other, the lower rate of tax shall be applied to the entire interest.

(b) (1) When the decedent was a resident, the tax shall be computed upon the value of the property, in excess of the deductions specified in Part VI, at the rates in effect at the transferor's death.

(2) When the decedent was a nonresident, the tax shall be computed upon the value of real property and tangible personal property having its situs in this Commonwealth, in excess of unpaid property taxes assessed on the property and any indebtedness for which it is liened, mortgaged or pledged, at the rates in effect at the transferor's death. The person liable to make the return under section 2136 may elect to have the tax computed as if the decedent was a resident and his entire estate was property having its situs in this Commonwealth, and the tax due shall be the amount which bears the same ratio to the tax thus computed as the real property and tangible personal property located in this Commonwealth bears to the entire estate of the decedent.

(c) When any person entitled to a distributive share of an estate, whether under an inter vivos trust, a will or the intestate law, renounces his right to receive the distributive share receiving therefor no consideration, or exercises his elective rights under 20 Pa.C.S. Ch. 22 (relating to elective share of surviving spouse) receiving therefor no consideration other than the interest in assets passing to him as the electing spouse, the tax shall be computed as though the persons who benefit by such renunciation or election were originally designated to be the distributees, conditioned upon an adjudication or decree of distribution expressly confirming distribution to such distributees. The renunciation shall be made within nine months after the death of the decedent or, in the case of a surviving spouse, within the time for election and any extension thereof under 20 Pa.C.S. § 2210(b) (relating to procedure for election; time limit). Notice of the filing of the account and of its call for audit or confirmation shall include notice of the renunciation or election to the department. When an unconditional vesting of a future interest does not occur at the decedent's death, the renunciation specified in this subsection of the future interest may be made within three months after the occurrence of the event or contingency which resolves the vesting of the interest in possession and enjoyment.

(d) In case of a compromise of a dispute regarding rights and interests of transferees, made in good faith, the tax shall

be computed as though the persons so receiving distribution were originally entitled to it as transferees of the property received in the compromise, conditioned upon an adjudication or decree of distribution expressly confirming distribution to such distributees. Notice of the filing of the account and of its call for audit or confirmation shall include notice to the department.

(e) If the rate of tax which will be applicable when a future interest vests in possession and enjoyment cannot be established with certainty, the department, after consideration of relevant actuarial factors, valuations and other pertinent circumstances, may enter into an agreement with the person responsible for payment to establish a specified amount of tax which, when paid within sixty days after the agreement, shall constitute full payment of all tax otherwise due upon such transfer.

(f) Property subject to a power of appointment, whether or not the power is exercised and notwithstanding any blending of the property with the property of the donee, shall be taxed only as part of the estate of the donor.

Section 2117. Estate Tax.--(a) In the event that a Federal estate tax is payable to the Federal Government on the transfer of the taxable estate of a decedent who was a resident of this Commonwealth at the time of his death, and the inheritance tax, if any, actually paid to the Commonwealth by reason of the death of the decedent (disregarding interest or the amount of any discount allowed under section 2142) is less than the maximum credit for State death taxes allowable under section 2011 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2011), a tax equal to the difference is imposed. If a resident decedent owned or had an interest in real property or tangible personal property having a situs in another state, the tax so imposed shall be reduced by the greater of:

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

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

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

tax, if any, actually paid to the Commonwealth (disregarding interest or the amount of any discount allowed under section 2142).

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

PART V VALUATION

Section 2121. Valuation.--(a) Except as otherwise provided in this part, the valuation date shall be the date of the transferor's death. When the transfer was made during lifetime and was not in trust, the property transferred shall be valued at the transferor's death. When the transfer was to an inter vivos trust, the property to be valued shall be that comprising the portion of the trust, if any, which exists at the transferor's death and which portion is traceable from property the transfer of which is subject to tax under this article.

(b) The value of a life interest shall be determined in accordance with rules and regulations promulgated by the department. Until the promulgation of rules and regulations to the contrary, the regulations in effect for Federal estate tax purposes shall apply.

(c) The value of an interest for a term certain shall be determined in accordance with rules and regulations promulgated by the department. Until the promulgation of rules and regulations to the contrary, the regulations in effect for Federal estate tax purposes shall apply.

(d) If an annuity or a life estate is terminated by the death of the annuitant or life tenant or by the happening of a contingency within nine months after the death of the transferor, the value of the annuity or estate shall be the value, at the date of the transferor's death, of the amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period he was entitled to the annuity or was in possession of the estate. If an appraisal of an annuity or life estate has been filed before the termination, the appraisal and any assessment based on the appraisal shall be revised in accordance with this section upon request of any party in interest, including the Commonwealth and the personal representative, insofar as the appraisal and any assessment based on the appraisal relates to the valuation of the terminated annuity or life estate, without the necessity of the party in interest following any procedure described in Part XI.

(e) The value of a future interest shall be determined in accordance with rules and regulations promulgated by the department. Until the promulgation of rules and regulations to the contrary, the regulations in effect for Federal estate tax purposes shall apply.

(f) When a decedent's property is subject, during his lifetime and at the time of his death, to a binding option or agreement to sell, the appraised value of the property shall not exceed the amount of the established price payable for it provided the option or agreement is a bona fide arrangement and not a device to transfer the property for less than an adequate and full consideration in money or money's worth. If the option or agreement is not exercised and consummated, the value at which the property is appraised shall not be limited to the established price payable for the property, and it shall not

exceed the value of the property on the date of the transferor's death. When tax has been assessed on the basis of an established price and the option or agreement is not exercised and consummated or an amount greater than the established price is received for the property, the fiduciary or transferee shall file a supplemental return reporting the facts.

Section 2122. Valuation of Certain Farmland.--(a) The following words and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Agricultural commodity." Any and all plant and animal products, including Christmas trees produced in this Commonwealth for commercial purposes.

"Agricultural reserve." Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis.

"Agricultural use." Use of the land for the purpose of producing an agricultural commodity or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

"Forest reserve." Land, ten acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

"Separation." A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this section into two or more tracts of land which continue to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act of December 19, 1974 (P.L.973, No.319), known as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974."

"Split-off." A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this section into two or more tracts of land, the use of which on one or more of such tracts does not meet the requirements of section 3 of the act of December 19, 1974 (P.L.973, No.319), known as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974."

(b) (1) The value for transfer inheritance tax purposes of land or an interest in land which is owned by a decedent and devoted to agricultural use, agricultural reserve or forest reserve shall be that value which such land has for its particular use if it also meets the following conditions:

(i) in the case of land devoted to agricultural use, the land was devoted to such agricultural use for the three years preceding the death of such decedent and is not less than ten contiguous acres in area or has an anticipated yearly gross income derived from agricultural use of two thousand dollars (\$2,000);

(ii) in the case of land devoted to agricultural reserve, the land is not less than ten contiguous acres in area;

(iii) in the case of land presently devoted to forest reserve, the land is not less than ten contiguous acres in area; or

(iv) the contiguous tract of land for which application is made is not less than the entire contiguous area of the owner

used for agricultural use, agricultural reserve or forest reserve purposes.

(2) In determining the value of land in agricultural use, agricultural reserve or forest reserve for its particular use, consideration shall be given to available evidence of such land's capability for its particular use as derived from the soil survey at The Pennsylvania State University, the National Cooperative Soil Survey, the United States Census of Agricultural Categories of land use classes and other evidence of the capability of the land devoted to such use and also, if the land is assessed under the provisions of the "Pennsylvania Farmland and Forest Land Assessment Act of 1974," to the valuation determined by the local county assessor thereunder.

(c) (1) If any tract of land in agricultural use, agricultural reserve or forest reserve, which is valued for inheritance tax purposes under the provisions of this part, is applied to a use other than agricultural use, agricultural reserve or forest reserve or for any other reason, except condemnation thereof, is removed from the category of land preferentially valued under this part within seven years following the death of such decedent, the owner at such time the land is so removed shall be subject and liable to tax due the Commonwealth in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation authorized under this section and the taxes that would have been paid or payable had that land been valued and taxed on the basis of its market value at the death of the decedent, plus interest thereon for the period from the date of death to the change of use at the rate established in section 2143.

(2) The tax shall be a lien upon the property in favor of the Commonwealth, collectible in the manner provided by law for the collection of delinquent real estate taxes, as well as the personal obligation of the owner at the time of such change of use. The tax shall become due on the date of change of use.

(3) Every owner of land preferentially valued under this section shall notify the register of wills of the county or counties in which the land is located of any change or proposed change in the use of the land. Any owner failing to make notification commits a misdemeanor of the third degree.

(d) (1) The split-off of a part of the land which has been valued, assessed and taxed under this article for a use other than agricultural use, agricultural reserve or forest reserve within the seven-year period provided for by subsection (c) shall, except when the split-off occurs through condemnation, subject the land divided and the entire parcel from which the land was divided to liability for taxes as otherwise set forth in this article except as provided in subclause (2).

(2) The owner of property subject to a preferential tax assessment may split off land covered by the preferential tax assessment within the seven-year period. The tract of land so split-off shall not exceed two acres annually and may only be used for residential use, agricultural use, agricultural reserve or forest reserve and the construction of a residential dwelling to be occupied by the person to whom the land is transferred. The total parcel or parcels of land split-off under the provisions of this subsection shall not exceed ten per cent or ten acres, whichever is less, of the entire tract subject to the preferential tax assessment. The split-off of a parcel of land which meets the requirements of this subsection shall not

invalidate the preferential tax assessment if it continues to meet the requirements of subsection (b).

(3) The owner of property subject to a preferential use assessment may separate land covered by the preferential use assessment. The separation shall not invalidate the preferential tax assessment unless a subsequent abandonment of preferential use occurs within seven years of the separation. The abandonment shall subject the entire tract of land separated to liability for taxes, which are to be paid by the person changing the use, as set forth in this article.

(4) When property subject to preferential tax assessment is separated among the beneficiaries taxed under subsection (a)(1) of section 2116, a subsequent change within the seven-year period provided for in subsection (b) in the use of one beneficiary's portion of the property shall subject only that tract held by the beneficiary who changes the use to liability under this article.

PART VI DEDUCTIONS

Section 2126. Deductions Generally.--The only deductions from the value of the property transferred shall be those set forth in this part. Except as otherwise provided in this article, they shall be deductible regardless of whether or not assets comprising the decedent's taxable estate are employed in the payment or discharge of the deductible items. When a tax is imposed upon a transfer described in subsection (c) of section 2107 and section 2108, the deductions shall be allowed to the transferee only to the extent that the transferee has actually paid the deductible items and either the transferee was legally obligated to pay the deductible items or the estate subject to administration by a personal representative is insufficient to pay the deductible items.

Section 2127. Expenses.--The following expenses may be deducted from the value of the property transferred:

(1) Administration expenses. All reasonable expenses of administration of the decedent's estate and of the assets includable in the decedent's taxable estate are deductible.

(2) Bequest to fiduciary or attorney in lieu of fees. A transfer to an executor, trustee or attorney in lieu of compensation for services is deductible to the extent it does not exceed reasonable compensation for the services to be performed.

(3) Family exemption. The family exemption is deductible.

(4) Funeral and burial expenses. Reasonable and customary funeral expenses, including the cost of a family burial lot or other resting place, are deductible.

(5) Tombstones and gravemarkers. Reasonable and customary expenses for the purchase and erection of a monument, gravestone or marker on decedent's burial lot or final resting place are deductible.

(6) Burial trusts or contracts. Bequests or devises in trust, or funds placed in trust after decedent's death or funds paid under a contract after decedent's death, in reasonable amounts, to the extent that the funds or income from the funds is to be applied to the care and preservation of the family burial lot or other final resting place in which the decedent is buried or the remains of the decedent repose and the structure on the burial lot or other final resting place, are deductible.

(7) Bequests for religious services. Bequests in reasonable amounts for the performance or celebration of religious rites, rituals, services or ceremonies, in consequence of the death of the decedent, shall be deductible.

Section 2128. Taxes.--The following taxes may be deducted from the value of the property transferred:

(1) Property taxes. Taxes imposed against the decedent or against any property constituting a part of decedent's gross taxable estate and which are owing prior to decedent's death are deductible. However, taxes for which decedent is not personally liable shall not be deductible in an amount exceeding the value of the property against which the taxes are liened.

(2) State and foreign death taxes. Death taxes other than the Federal estate tax, disregarding interest and penalty, paid to other states and territories of the United States and to taxing jurisdictions outside the United States and its territories on assets, the transfer of which is subject to tax under this article, if the taxes are required to be paid to bring the assets into this Commonwealth, or to transfer them to the new owner, are deductible.

Section 2129. Liabilities.--(a) All liabilities of the decedent shall be deductible subject to the limitations set forth in this section.

(b) Except as otherwise provided in subsections (h) and (i), the deductions for indebtedness of the decedent, when founded upon a promise or agreement, shall be limited to the extent that it was contracted bona fide and for an adequate and full consideration in money or money's worth.

(c) Except as provided by subclause (4) of section 2130, indebtedness owing by the decedent upon a secured loan is deductible whether or not the security is a part of the gross taxable estate.

(d) Except as provided by subclause (4) of section 2130, the decedent's liability (net of all collectible contribution) on a joint obligation is deductible whether or not payment of the obligation is secured by entireties property or property which passes to another under the right of survivorship.

(e) Indebtedness arising from a contract for the support of the decedent is deductible.

(f) Decedent's obligation is deductible whether or not discharged by testamentary gift.

(g) Decedent's debt, which is unenforceable because of any statute of limitations, is deductible if paid by the estate.

(h) A pledge to a transferee exempt under the provisions of subsection (c) of section 2111 is deductible if paid by the estate, whether or not it is legally enforceable.

(i) Liabilities arising from the decedent's tort or from decedent's status as an accommodation endorser, guarantor or surety are deductible, except to the extent that it can be reasonably anticipated that decedent's estate will be exonerated or reimbursed by others primarily liable or subject to contribution.

(j) The fact that a surviving spouse is legally liable and financially able to pay any item which, if the deceased spouse were unmarried, would qualify as a deduction under this part shall not result in the disallowance of such item as a deduction.

(k) Obligations for decedent's medical expenses are not deductible to the extent decedent's estate will be exonerated or reimbursed for such expenses from other sources.

Section 2130. Deductions Not Allowed.--The following are not deductible:

(1) The value of assets claimed for the spouse's allowance under 20 Pa.C.S. § 2102 (relating to share of surviving spouse).

(2) Claims of a former or surviving spouse, or others, under an agreement between the former or surviving spouse and the decedent, insofar as they arise in consideration of a relinquishment or promised relinquishment of marital or support rights.

(3) Litigation expenses of beneficiaries.

(4) Indebtedness secured by real property or tangible personal property, all of which has its situs outside of this Commonwealth, except to the extent the indebtedness exceeds the value of the property.

PART VII PAYMENT OF TAX

Section 2136. Returns.--(a) The following persons shall make a return:

(1) The personal representative of the estate of the decedent as to property of the decedent administered by him and additional property which is or may be subject to inheritance tax of which he shall have or acquire knowledge.

(2) The transferee of property upon the transfer of which inheritance tax is or may be imposed by this article, including a trustee of property transferred in trust. No separate return need be made by the transferee of property included in the return of a personal representative.

(b) The inclusion of property in the return shall not constitute an admission that its transfer is taxable.

(c) Any person required to file a return under subsection (a) shall promptly file a supplemental return with respect to additional assets and transfers which come to his knowledge after the original return has been filed.

(d) The returns required by subsection (a) shall be filed within nine months after the death of the decedent. At any time prior to the expiration of the nine-month period, the department, in its discretion, may grant an extension of the time for filing a return for an additional period of six months.

(e) The returns required by subsections (a) and (c) shall be made in the form prescribed by the department.

(f) When the decedent was a resident, the returns shall be filed with the register. When the decedent was a nonresident, the returns shall be filed with the register who issued letters, if any, in this Commonwealth; otherwise, the returns shall be filed with the department.

Section 2137. Appraisement.--The department shall have supervision over, and make or cause to be made, fair and conscionable appraisements of property the transfer of which is subject to tax under this article. The appraisement, unless suspended until audit, shall be made within six months after the return has been filed and, if not so made, shall be made within an additional period as the court, upon application of any party in interest, including the personal representative, shall fix.

Section 2138. Deductions.--The official with whom the return is required by subsection (f) of section 2136 to be filed shall determine the allowance or disallowance of all deductions claimed. The determination, unless suspended until audit, shall be made within six months after the claim for allowance has been filed and, if not so made, shall be made within such

further period as the court, upon application by any party in interest, including the personal representative, shall fix. However, the court, at the request of the fiduciary at the audit of his account, may determine and allow, as deductions, all properly deductible credits claimed in the account or allowed at the audit without requiring the filing of a separate claim for them, and the court may then fix the amount of the tax and decree payment of the tax. Deductions exceeding one hundred dollars (\$100) in the aggregate shall not be allowed by the court unless the Commonwealth is represented at the audit by counsel or unless there is proof that the register has had at least thirty days notice of the claim.

Section 2139. Assessment of Tax.--After the appraisement has been made and the allowance or disallowance of deductions determined, the inheritance tax, as affected by the court's determination of the allowance or disallowance of deductions as provided in section 2138, shall be assessed by the official with whom the return is required to be filed under subsection (f) of section 2136. The assessment, unless suspended until audit, shall be made within one month after the filing of the appraisement or determination of deductions, whichever occurs later, and, if not so made, shall be made within an additional period as the court, upon application by any party in interest, including the personal representative, shall fix.

Section 2140. Notice.--The department shall give, or cause to be given, notice of the filing of the appraisement, the determination of the allowance or disallowance of deductions and the amount of tax assessed, and all supplements, to the personal representative and to any transferee who filed a tax return or to their respective attorneys.

Section 2141. Failure to File Returns Not a Bar to Assessment of Tax.--Failure to file a return of a taxable transfer shall not bar the making of an appraisement or supplemental appraisement or assessment of tax or supplemental assessment of tax based upon taxable transfers not returned under the provisions of this article.

Section 2142. Payment Date and Discount.--Inheritance tax is due at the date of the decedent's death and shall become delinquent at the expiration of nine months after the decedent's death. To the extent that the inheritance tax is paid within three months after the death of the decedent, a discount of five per cent shall be allowed.

Section 2143. Interest.--If the inheritance tax is not paid before the date it becomes delinquent, interest on the unpaid tax shall be charged after the date of delinquency at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code." When payment of inheritance tax is not made because of litigation or other unavoidable cause of delay and the property on which the tax has been calculated has remained in the hands of a fiduciary and has not produced a net income equal to the rate of interest provided in this section annually, interest for such period shall be calculated at the rate of the net income produced by the property. Any payment on delinquent inheritance tax shall be applied first to any interest due on the tax at the date of payment and then, if there is any balance, to the tax itself.

Section 2144. Source of Payment.--(a) In the absence of a contrary intent appearing in the will, the inheritance tax, including interest, on the transfer of property which passes

by will absolutely and in fee, and which is not part of the residuary estate, shall be paid out of the residuary estate and charged in the same manner as a general administration expense of the estate. The payments shall be made by the personal representative and, if not so paid, shall be made by the transferee of the residuary estate.

(b) In the absence of a contrary intent appearing in the inter vivos trust, the inheritance tax, including interest, on the transfer of property which passes absolutely and in fee by inter vivos trust, and which is not part of the residue of the inter vivos trust, shall be paid out of the residue of the trust and charged in the same manner as a general administration expense of the trust. The payment shall be made by the trustee and, if not so paid, shall be made by the transferee of the residue of the trust.

(c) In the absence of a contrary intent appearing in the will, the inheritance tax, including interest, on the transfer of property which passes by will other than absolutely and in fee, and which is not part of the residuary estate, shall be paid out of the residuary estate and charged in the same manner as a general administration expense of the estate. The payment shall be made by the personal representative and, if not so paid, shall be made by the transferee of the residuary estate.

(d) In the absence of a contrary intent appearing in the inter vivos trust, the inheritance tax, including interest, on the transfer of property which passes other than absolutely and in fee by inter vivos trust, and which is not part of the residue of the inter vivos trust, shall be paid out of the residue of the trust and charged in the same manner as a general administration expense of the trust. The payment shall be made by the trustee and, if not so paid, shall be made by the transferee of the residue of the trust.

(e) In the absence of a contrary intent appearing in the will or other instrument of transfer, the inheritance tax, in the case of a transfer of any estate, income or interest for a term of years, for life or for other limited period, shall be paid out of the principal of the property by which the estate, income or interest is supported, except as otherwise provided in subsection (c) or (d). The payment shall be made by the personal representative or trustee and, if not so paid, shall be made by the transferee of such principal.

(f) In the absence of a contrary intent appearing in the will or other instrument of transfer and except as otherwise provided in this section, the ultimate liability for the inheritance tax, including interest, shall be upon each transferee.

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

(b) The personal representative of every decedent or, if there is no personal representative, any other fiduciary charged by law with the duty of filing a Federal estate tax return, within one month of the filing or receipt of the return shall file with the register or, if the decedent was a nonresident, with the register who issued letters, if any, in this Commonwealth, or otherwise with the department, a copy of his Federal estate tax return and of any communication from the Federal Government making any final change in the return or of the tax due. The assessment of estate tax shall be made by the register or department within three months after the filing of

the documents required to be filed and, if not so made, shall be made within an additional period as the court, upon application of any party in interest, including the personal representative, shall fix.

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

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

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

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

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

Section 2146. Deduction and Collection of Tax by Personal Representative or Other Fiduciary.--Subject to the provisions of sections 2144 and 2154, every personal representative or other fiduciary (other than a trustee of a pension, stock-bonus, profit-sharing, retirement annuity, deferred compensation, disability, death benefit, or other employe benefit plan) in charge of or in possession of any property, or instrument evidencing ownership of property, the transfer of which is subject to a tax imposed by this article other than a tax on a future interest not yet delinquent, shall deduct the tax from the property, if money, or shall collect the tax from the transferee. Any delivery of property or instrument by the fiduciary to a transferee, except in accordance with a decree of distribution of the court or pursuant to a duly executed notice of election filed under section 2154, shall not relieve him of personal liability for a tax imposed by this article. No personal representative or other fiduciary in charge of or in possession of any property subject to this article shall be compelled to pay or deliver it to the transferee except upon payment to him of the tax due other than tax on a future interest not yet delinquent. If the transferee neglects or refuses to pay the tax, the personal representative or other fiduciary may sell the property subject to the tax, or so much of the property as is necessary, under direction of the court. All money retained by the personal representative or other fiduciary, or paid to him on account of the taxes imposed by this article, shall be remitted by him before the tax becomes delinquent or, if received after the tax becomes delinquent, shall be remitted by him promptly upon its receipt.

Section 2147. Duties of Depositories.--When money is deposited or invested in a financial institution located in this Commonwealth in the names of two or more persons, other than husband and wife, or in the name of a person or persons in trust for another or others, and one of the parties to the deposit or investment dies, it shall be the duty of the

financial institution, within ten days after knowledge of the death, to notify the department, giving the name of the deceased person, the date of the creation of the joint or trust deposit or investment, the amount invested or on deposit at the date of death with the financial institution and the name and address of the survivor or survivors to the account. No notification shall be required in regard to the account when the deposit at the time of death does not exceed three hundred dollars (\$300).

Section 2148. Compromise by Department.--The department, with the approval of the Attorney General, may compromise in writing, with the person liable, the tax, including interest on the tax, payable on any transfer of property included in the estate of any decedent who it is alleged was a nonresident at the time of his death. A copy of the compromise agreement shall be filed with the register who issued letters, if any, in this Commonwealth; otherwise, it shall be filed with the department. The compromise agreement shall constitute a final determination of the matters covered by it and the payment of the tax, as fixed by the agreement, shall discharge all persons and property from liability with respect to the tax.

Section 2149. Interstate Compromise and Arbitration of Inheritance Taxes.--When the register or the department alleges that a decedent was a resident of this Commonwealth at the time of his death, and the taxing authorities of another state or territory make a like claim on behalf of their state or territory, a written agreement of compromise or a written agreement to submit the controversy to a board of arbitrators may be made under Part VIII.

Section 2150. Extension of Time for Payment.--The department may, for reasonable cause, extend the time for payment of any part of the inheritance tax and may, if deemed necessary for the protection of the interest of this Commonwealth, require the transferee in present possession or, if a trust is involved, the trustee to file a bond in the name of the Commonwealth with sufficient surety, in an amount not exceeding twice the tax computed when the bond is given at the highest rate possible in the specific contingencies involved (reduced by the amount of any partial payment made) and conditioned for the payment of the tax at such postponed due date, together with interest from the due date to the payment date. No bond shall be required under this section if the trustee or one of the trustees is a bank and trust company or a trust company incorporated in this Commonwealth or a national banking association having its principal office in this Commonwealth. The bond required shall be filed in the office of the register.

Section 2151. Bond for Delinquent Tax.--The court, in its discretion, at any time after a tax imposed by this article becomes delinquent, upon application of the department, may require any person liable for a tax imposed by this article to give a bond for its payment. The bond shall be in the name of the Commonwealth, in such amount and with such surety as the court approves and conditioned for the payment of the tax, plus interest at the same rate as the interest rate on deficiencies provided for in section 2143, commencing on the date the tax became delinquent, within a time certain to be fixed by the court and specified in the bond. The bond required shall be filed in the office of the register.

Section 2152. Evidence of Payment of Tax for Real Estate in Another County.--When any tax is imposed and paid under this

article on real estate located in a county other than that of the register who received payment, the register shall immediately forward to the register of the county where the real estate is located a certificate of the payment of the tax on the real estate which shall be entered of record in his office. The register of the county where the real estate is located shall be entitled to a fee of two dollars (\$2) for entering the record of payment to be paid as a part of the administration expenses of the decedent's estate.

Section 2153. Penalties.--(a) Any person who willfully fails to file a return or other report required of him under the provisions of sections 2136 and 2145 shall be personally liable, in addition to any liability imposed elsewhere in this article, to a penalty of twenty-five per cent of the tax ultimately found to be due or one thousand dollars (\$1,000), whichever is less, to be recovered by the department as debts of like amount are recoverable by law.

(b) Any financial institution which fails to give the notice required by section 2147 shall be liable to a penalty of one hundred dollars (\$100) to be recovered by the department as debts of like amount are recoverable by law.

(c) Any person who willfully makes a false return or report required of him under the provisions of this article, in addition to any liability imposed elsewhere in this article, commits a misdemeanor of the third degree.

Section 2154. Payment of Tax for Small Business Transfers.--(a) Notwithstanding the provisions of section 2142, the inheritance tax due under this article on the transfer of a small business interest may be paid by the qualified transferee in consecutive quarterly installments beginning immediately following the expiration of nine months after the decedent's death. The tax may be paid in twenty consecutive quarterly installments.

(b) The tax shall be paid in consecutive quarterly installments due on March 31, June 30, September 30 and December 31 of each year, provided the return required by section 2136 is timely filed, along with a notice of election executed by the qualified transferee and joined in by the personal representative which shall relieve the personal representative or other fiduciary of liability for the collection and payment of tax under section 2146. The notice of election shall be completed on a form prescribed by the department containing at least the following information:

- (1) The name of the decedent and date of death.
- (2) The name or names of the personal representative or other fiduciary.
- (3) The name or names of the qualified transferees filing the election.
- (4) A description and estimated valuation of the business interest on which tax is due.
- (5) A statement that the qualified transferees assume full personal responsibility for the tax.

Each notice of election shall be affirmed before an officer empowered to administer oaths. The installment payment of tax shall bear interest at the rate of nine per cent per annum.

(c) In the event any portion of a small business interest on which the installment payment of tax has been elected is sold, exchanged or otherwise disposed of prior to the expiration of five years following the date of death and that portion equals or exceeds fifty per cent of the total value of the small

business interest received by the qualified transferee, the transferee shall immediately provide written notice of the sale, exchange or disposition to the department, and the full amount of the tax then outstanding on that portion shall become due and payable at the expiration of sixty days following the date of sale, exchange or other disposition.

(d) For purposes of this section, the term "small business interest" means an interest in an operating trade or business entity the principal purpose of which is not the management of investments or income producing assets owned by the entity which has employed an average of less than fifty full-time employees during the twelve months immediately preceding the date of death and which meets one of the following criteria:

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business if:

(i) twenty per cent or more of the total capital interest in the partnership is included in determining the gross estate of the decedent; or

(ii) the partnership had ten or less partners.

(3) Stock in a corporation carrying on a trade or business if:

(i) twenty per cent or more in value of the voting stock of the corporation is included in determining the gross estate of the decedent; or

(ii) the corporation had ten or less shareholders.

(e) Qualified transferee defined.--For purposes of this section, the term "qualified transferee" means a legatee or other transferee receiving:

(1) ten per cent or more of the value of a proprietorship qualifying as a small business interest as defined in subsection (d);

(2) ten per cent or more of the total capital interest in a partnership qualifying as a small business interest as defined in subsection (d); or

(3) ten per cent or more in value of the voting stock of a corporation qualifying as a small business interest as defined in subsection (d).

PART VIII

UNIFORM ACT ON INTERSTATE COMPROMISE AND ARBITRATION OF INHERITANCE TAXES

Section 2156. Short Title.--This part shall be known and may be cited as the "Uniform Act on Interstate Compromise and Arbitration of Inheritance Taxes."

Section 2157. Compromise Agreement and Filing, Interest or Penalty for Nonpayment of Taxes.--When the department or the register claims a decedent was domiciled in this Commonwealth at the time of his death and the taxing authority of another state makes a like claim on behalf of its state, the department may, with the approval of the Attorney General, make a written agreement of compromise with the other taxing authority and the executor or administrator of the decedent that a certain sum shall be accepted in full satisfaction of any and all inheritance taxes imposed by this Commonwealth, including any interest or penalties to the date of signing the agreement. The agreement shall also fix the amount to be accepted by the other state in full satisfaction of inheritance taxes. The executor or administrator of the decedent is authorized to make the agreement. The agreement shall conclusively fix the amount of

tax payable to the Commonwealth without regard to any other provision of the laws of this Commonwealth. Unless the tax agreed upon is paid within sixty days after the signing of the agreement, interest or penalties shall accrue upon the amount fixed in the agreement, but the time between the decedent's death and the signing of the agreement shall not be included in computing the interest or penalties. In the event the aggregate amount payable under the agreement to the states involved is less than the maximum credit allowable to the estate against the Federal estate tax imposed with respect to the estate, the personal representatives shall also pay to the department so much of the difference between the aggregate amount and the amount of such credit as the amount payable to the department under the agreement bears to the aggregate amount. A copy of the agreement shall be filed in the office of the proper register, and any existing appraisal shall be deemed modified according to the agreement. In the event no appraisal has been made and filed prior to the agreement, the department shall direct an appraisal to be made and filed in the office of the proper register in accordance with the agreement.

Section 2158. Arbitration Agreement.--When the department or the register claims that a decedent was domiciled in this Commonwealth at the time of his death and the taxing authority of another state makes a like claim on behalf of its state, the department may, with the approval of the Attorney General, make a written agreement with the other taxing authority and with the executor or administrator of the decedent to submit the controversy to the decision of a board consisting of one or any uneven number of arbitrators. The executor or administrator of the decedent is authorized to make the agreement. The parties to the agreement shall select the arbitrator or arbitrators.

Section 2159. Arbitration Board.--(a) The board shall have the power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of books, papers and documents and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, any judge of a court of record of this Commonwealth, upon application by the board, may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt.

(b) The board shall hold hearings at a time and place it may determine, upon reasonable notice to the parties to the agreement, all of whom shall be entitled to be heard, to present evidence and to examine and cross-examine witnesses.

(c) Except as provided in subsection (a) in respect to the issuance of subpoenas, all questions arising in the course of the proceedings shall be determined by a majority vote of the board.

(d) The board shall, by a majority vote, determine the domicile of the decedent at the time of his death. This determination shall be final for the purpose of imposing and collecting inheritance taxes but for no other purpose.

(e) The compensation and expenses of the members of the board and its employes may be agreed upon among the members and the executor or administrator and, if they cannot agree, shall be fixed by any court having jurisdiction over probate matters of the State determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed

an administration expense and shall be payable by the executor or administrator.

Section 2160. Filing of Determination of Domicile and Other Documents.--The department, register or board, or the executor or administrator of the decedent, shall file the determination of the board as to domicile, the record of the board's proceedings and the agreement, or a duplicate, made pursuant to section 2158 with the authority having jurisdiction to assess or determine the inheritance taxes in the State determined by the board to be the domicile of the decedent and shall file copies of the documents with the authorities that would have been empowered to assess or determine the inheritance taxes in each of the other states involved.

Section 2161. Interest or Penalties for Nonpayment of Taxes.--In any case where it is determined by the board that the decedent died domiciled in this Commonwealth, interest or penalties, if otherwise imposed by law, for nonpayment of inheritance taxes between the date of the agreement and of filing of the determination of the board as to domicile shall not exceed the rate provided for in section 2143.

Section 2162. Compromise by Parties to Arbitration Agreement.--The provisions of this part shall not prevent at any time a written compromise, if otherwise lawful, by all parties to the agreement made pursuant to section 2157, fixing the amounts to be accepted by this Commonwealth and any other state involved in full satisfaction of inheritance taxes.

Section 2163. Reciprocal Application.--The provisions of this part relative to arbitration shall apply only to cases in which and so far as each of the states involved has a law identical or substantially similar to this part.

PART IX

COLLECTION OF TAX

Section 2166. Timely Mailing Treated as Timely Filing and Payment.--Notwithstanding the provisions of any State tax law to the contrary, whenever a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the taxpayer shall be deemed to have complied with the law if the letter transmitting the report or payment of the tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received. For the purposes of this article, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

Section 2167. Lien and Duration of Lien.--The taxes imposed by this article, together with any interest on the taxes, shall be a lien upon the real property included in the transfer on which the taxes are imposed. Except as otherwise provided in this part, the lien shall remain until the taxes and interest are paid in full.

Section 2168. Limited and Future Interests.--In the case of a transfer of any estate, income or interest for a term of years, for life or for other limited period, or constituting a future interest, the taxes imposed by this article, together with any interest on the tax, shall remain a lien until paid upon the entire real property by which the estate, income or interest is supported, or of which it is a part, and the lien shall be limited to the real property so transferred.

Section 2169. Purchaser, Mortgagee or Lessee.--Unless suit for collection of the taxes imposed by this article is instituted within twenty years after any tax becomes delinquent, the lien shall cease as to any purchaser, mortgagee or lessee of a devisee or heir of, or a beneficiary under a deed of trust of, the real property subject to the lien. Any time within the twenty-year period, if any tax on the real property is not paid, the department shall have power to file a certificate, under its seal, certifying to nonpayment which, when filed in the office of the clerk of the county where the real property is situated, shall continue the lien against decedent's real property for an additional period of five years from the date of the filing and the lien shall be indexed in the office of the clerk. If the taxes on the real property are not paid within the additional period of five years, the department shall have power to extend the lien for additional periods of five years by filing a certificate in the manner provided in this section.

Section 2170. Sale by Fiduciary.--If real property subject to the lien of taxes imposed by this article is sold or exchanged by a fiduciary who is subject to the jurisdiction of the court and who has given bond as required by 20 Pa.C.S. (relating to decedents, estates and fiduciaries), or is a corporate fiduciary which need not file bond under Title 20, the lien on the property sold shall cease.

Section 2171. Sale by Heir, Devisee or Fiduciary.--If real property subject to the lien of taxes imposed by this article is sold or exchanged or otherwise disposed of by an heir, devisee or fiduciary, and if the inheritance tax, together with interest, is paid on all property reported in the tax return, including the property sold, which property has been appraised and tax assessed, the lien of any unpaid tax imposed by this article shall cease as to the property sold.

Section 2172. Sale of Property Transferred Inter Vivos.--When real property or any income or interest in the real property or income has been transferred within the meaning of subsection (c) of section 2107 and the transferee has sold, mortgaged or leased the property or any income or interest in the property, the interest of a bona fide purchaser, mortgagee or lessee in the property shall not be subject to any lien for the taxes imposed by this article.

Section 2173. Subordination of Lien.--If real property subject to the lien is mortgaged or leased by a fiduciary who is subject to the jurisdiction of the court and who has given a bond as required by 20 Pa.C.S. (relating to decedents, estates and fiduciaries), or is a corporate fiduciary which need not file bond under 20 Pa.C.S., the lien shall become subject and subordinate to the rights and interests of the mortgagee, lessee or other person so secured.

Section 2174. Cessation Upon Approval of Bond.--Upon approval of a bond for the payment of taxes imposed upon a transfer, the lien upon the real property shall cease. The amount of the bond shall not exceed the value of the real property transferred.

Section 2175. Release of Lien.--(a) In case of a transfer, other than by will or intestacy, the department, upon satisfactory proof that no taxes are due which would be a lien on the real property transferred by reason of the death of the transferor, may release all or any portion of the property from any lien imposed by this article to which the property otherwise might be subject.

(b) The department may, at any time, release all or any portion of the real property subject to any lien imposed by this article from such lien or subordinate such lien to other liens and encumbrances if it determines that the taxes are sufficiently secured by a lien on other property of the decedent or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

(c) When inheritance tax in respect to the transfer of particular real property is paid on the value of the property without diminution for any deductions authorized by this article, other than a mortgage on the property existing at the date of the decedent's death, the department, upon request of a party in interest, shall issue a certificate evidencing the release of the property from the lien of tax.

(d) A certificate by the department to the effect that any real property or interest in real property subject to any lien imposed by this article has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence as to any bona fide purchaser, encumbrancer or lessee that the lien has been released or subordinated.

Section 2176. Enforcement Procedure.--(a) The court, at the request of the register, department or Office of Attorney General, shall issue a citation, directed to those liable for the payment of the taxes or subject to any other duty imposed by this article, commanding the person or persons to appear and show cause why the requirements of this article should not be met.

(b) The court may issue any decree warranted by the facts, according to equity.

(c) A citation to enforce payment of taxes due under this article or compliance with the duties required by this article shall be issued by the court upon application of the register, department or Office of Attorney General whenever any of the following occurs:

(1) A tax return is not filed within the time required by this article.

(2) Any tax due under this article remains delinquent.

(3) A Federal estate tax return has been filed but a copy of the return or a communication making a final change on the return has not been filed as required by section 2145.

(4) Any other duty imposed by this article remains unperformed.

(d) The register or department may issue subpoenas to compel the production of documents and the attendance of witnesses necessary for the administration of this article.

(e) Execution may be issued by the court against any real property in the decedent's estate on which a lien for the payment of the taxes imposed by this article exists or against any property belonging to a transferee liable for the tax.

(f) The department may bring suits in the courts of other states to collect death taxes (including interest and penalties on the taxes) imposed by this article. An official of another state which extends a like comity to the Commonwealth may sue for the collection of death taxes (including interest and penalties on the taxes) in the courts of this Commonwealth. A certificate by the Secretary of State of another state, under the seal of that state, that an official has authority to collect its death taxes shall be conclusive evidence of the

authority of the official in any suit for the collection of the taxes in any court of this Commonwealth.

PART X
REFUND OF TAX

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 for refund is made within the appropriate time limit as set forth in subsection (d).

(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 two 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 Board of Finance and Revenue.

(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.

PART XI
DISPUTED TAX

Section 2186. Protest, Notice and Appeal.--(a) Any party in interest, including the Commonwealth and the personal representative, not satisfied with the appraisal, the allowance or disallowance of deductions, the assessment of tax, or supplements or any other matter relating to any tax imposed by this article, within sixty days after receipt of notice of the action complained of may:

(1) file with the department a written protest, sending a copy thereof to the Office of Attorney General;

(2) notify the register in writing that he elects to have the correctness of the action complained of determined at the audit of the account of the personal representative; or

(3) appeal to the court to have the correctness of the action complained of determined at the audit of the account of the personal representative, or at a time the court shall fix. The protest, notification or appeal shall specify all the objections to the action complained of. When the protest, notification or appeal is filed by the Commonwealth, a copy shall also be sent to the personal representative and to all other persons who filed a tax return.

(b) If a notification or appeal has been filed from an assessment of tax where it is contended that the rate of tax which will be applicable when a future interest vests in possession and enjoyment cannot presently be established with certainty and no compromise has been entered into pursuant to subsection (e) of section 2116, the court, after consideration of relevant actuarial factors, valuations and other pertinent circumstances, shall determine what portion of the transfer is to become taxed at each of the rates which might be applicable.

(c) Whenever any appeal or protest is brought pursuant to this part and the subject matter of the appeal concerns the valuation of certain farmland as set forth in section 2122, the forum designated by the department to hear the appeal or protest shall include at least two farmers and the Secretary of Agriculture. The farmers and the Secretary of Agriculture shall be accorded full powers within the forum with full voting rights.

Section 2187. Bond.--No bond shall be required of any party in interest who files a protest or notification against, or appeals from, an appraisal, allowance or disallowance of a deduction, assessment of tax or supplements or other matter relating to the tax or from the decision of the department following a protest or who petitions for removal of the record to the court.

Section 2188. Appeal and Removal from Department.--(a) Any party in interest, including the Commonwealth and the personal representative, not satisfied with the decision of the department upon a protest may appeal from the department to the court within sixty days after receipt of notice of the entry of the decision of the department. When no decision has been rendered by the department within thirty days after the protest has been filed with the department, the court upon petition of any party in interest may direct the department to transmit the entire record to the court. When an appeal is taken from the decision of the department or the court directs the department to transmit the entire record to the court, the court shall either proceed to a determination of the issues protested to the department or suspend the determination until the audit of the account of the personal representative.

(b) If the appeal or removal arises from an assessment of tax where it is contended that the rate of tax which will be applicable when a future interest vests in possession and enjoyment cannot presently be established with certainty, and no compromise has been entered into pursuant to subsection (e) of section 2116, the court after consideration of relevant actuarial factors, valuations and other pertinent circumstances shall determine what portion of the transfer is to become taxed at each of the rates which might be applicable.

PART XII

ENTRY INTO SAFE DEPOSIT BOX

Section 2191. Entry Prohibited.--Unless provided otherwise in this part, no person having actual knowledge of the death

of a decedent shall enter a safe deposit box of the decedent. This part shall not be construed to confer upon any person any right of entry into a safe deposit box of a decedent which he does not otherwise have.

Section 2192. Entry Without Notice to Department.--(a) A safe deposit box of a decedent may be entered and any or all of the contents removed in the presence of an employe of the financial institution in which the box is located. The employe shall make, or cause to be made, a record of the contents of the box, which record he shall attest under penalty of perjury to be correct and complete. The financial institution may make a reasonable charge for the attendance of its employe at the entry of the box and the listing of the contents, which charge shall be deductible as an administration expense under subclause (1) of section 2127.

(b) A safe deposit box of a decedent may be entered and any or all of the contents removed in the presence of a representative of the department authorized by the secretary. The department shall authorize at least one such representative in and for each county of this Commonwealth. The representative present at the time of entry into the box shall make or cause to be made a record of the contents of the box.

(c) The court for cause shown may order that a designated person or persons be permitted to enter a safe deposit box of a decedent and remove the contents described in the order, under supervision as the court may direct. The order may also require that a record be made of the contents of the box.

(d) Notwithstanding any of the provisions of this part, the department, at any time and without relation to the death of a specific decedent, by a certificate issued to a firm whose business requires ready access to safe deposit boxes, may issue a general authorization for the entry into, and removal of the contents of, a safe deposit box of a decedent, under terms and conditions as it may prescribe. A financial institution may permit such entry and removal upon presentation to it of such certificates issued by the department.

(e) Nothing in this part shall prohibit a financial institution from permitting entry into a safe deposit box of a decedent for the sole purpose of removing the decedent's will and evidence of ownership of the burial lot in which the decedent is to be interred. An employe of the financial institution must be present at the opening of the box and make or cause to be made a record of the documents removed from the safe deposit box during the entry and attest the record to be correct and complete under penalty of perjury.

Section 2193. Entry Upon Notice to Department.--(a) When entry into a safe deposit box of a decedent is not or cannot be made under the provisions of subsection (a), (b), (c) or (d) of section 2192, a safe deposit box of a decedent may be entered at the time fixed in a notice mailed to the Department of Revenue, Harrisburg, Pennsylvania, and to the financial institution in which the box is located, in the manner specified in this section. The date fixed for entry and contained in the notice shall not be less than seven days after the date of notice is mailed. A representative of the department may be present at the time fixed for entry and may make or cause to be made a record of the contents of the box.

(b) The notice required under subsection (a) shall be delivered to the United States Postal Service for mailing in a manner that will provide for a record of the mailing being made

by the United States Postal Service and a receipt being furnished to the sender. An exact copy of the notice shall be transmitted to the financial institution in which the box is located.

(c) At the time fixed in the notice required by subsection (a), although no representative of the department is present, it shall be lawful for a financial institution in which a safe deposit box of a decedent is located to permit, and it shall permit, entry into the box and removal of its contents by a person who furnishes a signed statement under penalty of perjury that he or someone in his behalf has given such notice.

Section 2194. Subsequent Entries.--Nothing in this part shall be construed to impose any restriction upon reentry into a safe deposit box of a decedent at any time subsequent to an entry made in accordance with any of the provisions of this part other than subsection (e) of section 2192.

Section 2195. Confidential Nature of Contents.--Any information gained from the contents of a safe deposit box of a decedent by a person whose attendance at the entry into the box was required by this part shall be confidential and shall not be disclosed for other than official purposes to collect the taxes imposed by this article.

Section 2196. Penalties.--(a) Any employe of a financial institution in which the safe deposit box of a decedent is located who, having actual knowledge of the death of the decedent, enters or permits the entry by any person into a safe deposit box of the decedent in violation of the provisions of this part commits a misdemeanor of the third degree.

(b) Any person, other than an employe of a financial institution in which the safe deposit box of a decedent is located, who, having actual knowledge of the death of a decedent, enters a safe deposit box of the decedent in violation of the provisions of this part commits a misdemeanor of the third degree.

(c) Any person who violates the provisions of section 2195 commits a misdemeanor of the third degree.

Section 37. Section 3003(a) of the act, amended December 1, 1983 (P.L.228, No.66), is amended to read:

Section 3003. Prepayment of Tax.--(a) Notwithstanding the provisions of this act, or any other State tax law to the contrary, which required taxpayers to make payment of tentative tax, including but not limited to the capital stock and franchise tax, corporate net income and corporation income tax, gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, insurance premiums tax, mutual thrift institutions tax, net earnings tax, or other similar tax law requiring payment of tentative tax, but excluding the prepayment by banks under Article VII or XVI and title insurance and trust companies under Article VIII or XVI, and public utilities under Article XI-A of this act, such taxpayers, commencing with the calendar year 1970 and fiscal years beginning during the calendar year 1970 and each taxable year thereafter, on or before the fifteenth day of [April] **March** for calendar year taxpayers, and on or before the fifteenth day of the [fourth] **third** month after the close of its previous fiscal year for fiscal year taxpayers, shall report annually and pay on account of the tax due for the current year, an amount to be computed by applying the current tax rate to ninety per cent of such tax base from the immediate prior year as may be applicable with respect to the tax being reported.

* * *

Section 38. Section 3003.2(c) of the act, amended October 14, 1988 (P.L.737, No.106), is amended to read:

Section 3003.2. Estimated Tax.--* * *

(c) Estimated tax shall be paid as follows:

(1) Payments of estimated corporate net income tax shall be made in equal installments on or before the fifteenth day of the [fourth] **third**, sixth, ninth and twelfth months of the taxable year. The remaining portion of the corporate net income tax due, if any, shall be paid upon the date the corporation's annual report is required to be filed without reference to any extension of time for filing such report.

(2) Payment of estimated capital stock and franchise tax shall be made in installments in accordance with the following schedules:

Year In Which Tax Year Begins	First Due on the 15th day of the following months after close of the previous tax year:	Second 6th Month	Third 9th Month	Fourth 12th Month
1988	3rd Month 44%	44%	6%	6%
1989	34%	34%	16%	16%
1990	29%	29%	21%	21%
1991 and thereafter	25%	25 %	25%	25%

The remaining portion of the capital stock and franchise tax due, if any, shall be paid upon the date the corporation's annual report is required to be filed without reference to any extension of time for filing such report.

(3) Beginning in calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter, payment of the estimated mutual thrift institution tax shall be made in equal installments on or before the fifteenth day of the [fourth] **third**, sixth, ninth and twelfth months of the taxable year. The remaining portion of the mutual thrift institution tax due, if any, shall be paid upon the date the institution's annual report is required to be filed without reference to any extension of time for filing such report.

* * *

Section 39. Section 3003.3(d) of the act, amended October 14, 1988 (P.L.737, No.106), is amended and the section is amended by adding a subsection to read:

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

(d) Notwithstanding the provisions of the preceding subsections, the addition to the tax 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 second preceding taxable year, **adjusted for any changes to**

sections 401, 601 and 602 enacted for tax years beginning on or after January 1, 1991, if a report showing a liability for tax was filed by the taxpayer for the second preceding taxable year and such second preceding year was a taxable year of twelve months. 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. For taxpayers that have filed only one or two previous returns, if the second preceding taxable year is less than twelve months, then the first preceding taxable year shall be used; or, if there is no second preceding taxable year, then the first preceding taxable year shall be used. If the first preceding taxable year is less than twelve months, then the annualized first preceding taxable year shall be used. Provided, however, that if the settled tax for the second preceding year exceeds the tax shown on such report by ten per cent or more, the settled tax adjusted to reflect the current tax rate shall be used for purposes of this subsection, except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any petition by the department or by the taxpayer. In the event that the settled or resettled tax for the second preceding year exceeds the tax shown on the report by ten per cent or more, an addition to the tax resulting from the utilization of such settled or resettled tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of such settlement or resettlement, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to such settled or resettled tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the settled or resettled tax for the second preceding taxable year, the tax will be reduced by multiplying it by the number of days in the short taxable year and dividing the resulting amount by three hundred sixty-five.

(e) (1) When the amendments to sections 401, 601 and 602 and subsection (d) result in an increase of a taxpayer's estimated taxes for 1991 and 1992 or the required safe harbor amount, the additional required installment payments of estimated tax as well as the additional amount of the required installment payments to meet the "safe harbor" shall be treated as provided by this subsection for additional estimated payments, safe harbor payments and the recomputation and preservation of the "safe harbor."

(2) (i) For purposes of computing the estimated tax "safe harbor" pursuant to subsection (d) for tax years 1991 and 1992, the second preceding taxable year (base year) shall be recomputed with the amended sections 401, 601 and 602.

(ii) Any taxpayer whose "safe harbor" is affected by this section must file a recomputation of its safe harbor year within sixty days of the effective date of this act for calendar year 1991 or taxable years beginning in 1991 and within seventy-five

days of the beginning of its taxable year for calendar year 1992 or taxable years beginning in 1992. The recomputation shall be on forms as prescribed by the Department of Revenue. Any taxpayer failing to file a recomputation as required shall be denied the use of the "safe harbor" provisions of subsection (d).

(3) To the extent the amendments to sections 401, 601 and 602 and subsection (d) result in an increase in the corporation's estimated tax or the safe harbor amount, installments due after the effective date of this act shall be made pursuant to section 3003.2 and this section except:

(i) Additional amounts associated with installment payment of estimated tax due prior to the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within sixty days of the effective date of this act or on the due date of the next installment.

(ii) Additional amounts associated with installment payment of estimated tax due within sixty days of the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within sixty days of the effective date of this act or on the due date of the next installment.

Section 40. No credit shall be granted under section 1101.2 of the act following tax year 1997 unless reenacted by the General Assembly.

Section 41. It is the intent of the General Assembly that the amendment of section 201(c)(6) is to clarify existing law and shall not be construed to indicate a presumption that it is the intent of the General Assembly to change the existing law.

Section 42. The following acts and parts of acts are repealed:

Section 2(c) of the act of July 10, 1986 (P.L.1405, No.123), entitled "An act amending the act of March 4, 1971 (P.L.6, No.2), entitled 'An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties,' reenacting provisions relating to a credit against gross receipts tax for railroad expenditures on maintenance of right-of-way improvements."

72 Pa.C.S. Ch. 17.

Section 43. This act shall apply as follows:

(1) The amendment of sections 401(3)1(b) and (b.1), 402, 601, 602, 602.1, 602.3 and 3003.3(d) and (e) of the act shall apply retroactively to the taxable years beginning on or after January 1, 1991.

(2) The amendment of section 1101(a) of the act shall apply to gross receipts realized on or after July 1, 1991.

(3) The addition of Article XXI shall apply to the estate of decedents dying on or after the effective date of Article XXI and to inter vivos transfers made by decedents dying on or after the effective date of Article XXI regardless of the date of transfer.

(4) No tax shall be imposed on those services defined in section 201(w) through (kk) of the act which are predominantly used outside this Commonwealth.

(5) In the case of the tax on services defined in section 201(w) through (kk) of the act where contracts for the sale of the services have been entered into prior to the effective date of the amendments to Article II of the act, the tax under Article II of the act shall be prorated as follows:

- (i) Determine the total value of the contract.
- (ii) Multiply the total value of the contract by the ratio of:
 - (A) the remaining term of the contract on the effective date of the amendments to Article II of the act; to
 - (B) the total term of the contract.

(6) The addition of section 901(3) of the act and the amendments of sections 902 and 903 of the act shall apply retroactively to annuity considerations received after June 30, 1991. Tentative tax payments required under section 3003 of the act on or after the effective date of the addition of section 901(3), and the amendments of sections 902 and 903 shall be computed by applying the current tax rate to 90% of the tax base, including annuity business for the full immediate prior year.

Section 44. The Department of Revenue shall provide notice to employers, either in the Pennsylvania Bulletin under 1 Pa. Code § 3.27 or by other means, of the withholding rate equivalent to the rate of tax in effect prior to the effective date of the amendments of Article III of the act plus the additional rate necessary to equalize withholding over the remainder of the taxable year to account for the revised annual rate provided by the amendments to Article III of the act, to be effective from the first pay period of the employer ending after the 14th day following the effective date of section 302 of the act and ending December 31, 1991. The withholding rate during periods in calendar year 1992 shall correspond to the rate imposed by section 302 of the act for identical periods in calendar year 1992.

Section 45. (a) The amendment, addition or repeal of sections 301 and 304 shall be retroactive to January 1, 1991.

(b) The amendment, addition or repeal of sections 302 and 302.2 shall be retroactive to July 1, 1991.

(c) The addition of section 1104 shall be retroactive to January 1, 1989.

Section 46. 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.

Section 47. This act shall take effect as follows:

(1) The amendment or addition of sections 324, 324.1, 324.2, 324.3, 325 and 352(b), (d) and (f), 402.1, 3003 and 3003.2 of the act shall take effect January 1, 1992.

(2) The addition of Article XXI and the repeal of 72 Pa.C.S. Ch. 17 shall take effect in 60 days.

(3) The amendment or addition of sections 1206, 1206.1, 1221(c), 1222(a), 1223, 1224, 1278(c) and 1285(c) of the act shall take effect in 15 days.

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

APPROVED--The 4th day of August, A. D. 1991.

