

TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS

Act of Apr. 23, 1998, P.L. 239, No. 45

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HB 1766

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing, in sales and use tax, for definitions, for imposition, for exclusions and for refunds; further providing, in personal income tax, for definitions, for an exclusion on a sale of a principal residence and for expanded poverty provisions; further providing for corporate net income tax definitions and for an extension of net operating loss; further providing, in capital stock and franchise tax, for definitions and reports and for a reduction in rate; providing, in capital stock and franchise tax, for family farm corporation exemptions; further providing for utilities gross receipts tax imposition, for realty transfer tax definitions, for the neighborhood assistance tax credit, for malt beverage tax reports and for evidence of payment of inheritance tax; providing for restatement of tax liability under treaties; and making repeals.

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

Section 1. Section 201(k)(8), (m) and (o)(4) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended June 30, 1995 (P.L.139, No.21) and May 7, 1997 (P.L.85, No.7), are amended, clauses (d) and (o) are amended by adding subclauses 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:

* * *

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

* * *

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

* * *

(k) "Sale at retail."

* * *

(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 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 34 Pa.C.S. (relating to game)[;] **and the propagation and raising of horses to be used exclusively for commercial racing activities.**

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

(D) Processing as defined in 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), except that the exclusion provided in this subclause for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

* * *

(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, premium cable or premium video programming service, 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 (i) subscriber line charges and basic local telephone service for residential use and (ii) charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate, 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. [The term "telecommunications service" shall not include subscriber charges for access to a video dial tone system nor shall it include charges to video programmers for the transport of video programming.]

* * *

(o) "Use."

* * *

(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 the operations of--

(i) The manufacture of tangible personal property[;].

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

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

(iv) 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) 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 (16) and (w) through (kk), except that the exclusion provided in subparagraph (ii) for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

* * *

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

* * *

(nn) "Construction contract." A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of any real estate structure. The term shall not apply to services which are taxable under clauses (k)(14) and (o)(12).

(oo) "Construction contractor." A person who performs an activity pursuant to a construction contract, including a subcontractor.

(pp) "Building machinery and equipment." Generation equipment, storage equipment, conditioning equipment, distribution equipment and termination equipment which shall be limited to the following:

- (1) air conditioning limited to heating, cooling, purification, humidification, dehumidification and ventilation;
- (2) electrical;
- (3) plumbing;
- (4) communications limited to voice, video, data, sound, master clock and noise abatement;
- (5) alarms limited to fire, security and detection;

(6) control system limited to energy management, traffic and parking lot and building access;

(7) medical system limited to diagnosis and treatment equipment, medical gas, nurse call and doctor paging;

(8) laboratory system;

(9) cathodic protection system; or

(10) furniture, cabinetry and kitchen equipment.

The term shall include boilers, chillers, air cleaners, humidifiers, fans, switchgear, pumps, telephones, speakers, horns, motion detectors, dampers, actuators, grills, registers, traffic signals, sensors, card access devices, guardrails, medial devices, floor troughs and grates and laundry equipment, together with integral coverings and enclosures, whether or not the item constitutes a fixture or is otherwise affixed to the real estate, whether or not damage would be done to the item or its surroundings upon removal or whether or not the item is physically located within a real estate structure. The term "building machinery and equipment" shall not include guardrail posts, pipes, fittings, pipe supports and hangers, valves, underground tanks, wire, conduit, receptacle and junction boxes, insulation, ductwork and coverings thereof.

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

(rr) "Telecommunications service." Any one-way transmission or any two-way, interactive transmission of sounds, signals or other intelligence converted to like form which effects or is intended to effect meaningful communications by electronic or electromagnetic means via wire, cable, satellite, light waves, microwaves, radio waves or other transmission media. The term includes all types of telecommunication transmissions, such as local, toll, wide-area or any other type of telephone service; private line service; telegraph service; radio repeater service; wireless communication service; personal communications system service; cellular telecommunication service; specialized mobile radio service; stationary two-way radio service; and paging service. The term does not include any of the following:

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

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

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

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

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

(ss) "Internet." The international nonproprietary computer network of both Federal and nonfederal interoperable packet switched data networks.

(tt) "Commercial racing activities." Any of the following:

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

(2) Fair racing sanctioned by the State Harness Racing Commission.

Section 2. Section 202(c) of the act, amended June 30, 1995 (P.L.139, No.21), is amended to read:

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

(c) Notwithstanding any other provisions of this article, the tax with respect to [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 charged to customers for such services, irrespective of whether such charge is based upon a flat rate or upon a message unit charge, but in no event shall charges for telephone calls paid for by inserting money into a telephone accepting direct deposits of money to operate be subject to this tax. **A telecommunications service provider shall have no responsibility or liability to the Commonwealth for billing, collecting or remitting taxes that apply to services, products or other commerce sold over telecommunications lines by third-party vendors.** 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(10), (29), (35) and (49) of the act, amended or added August 31, 1971 (P.L.362, No.93), December 3, 1993 (P.L.473, No.68) and May 7, 1997 (P.L.85, No.7), 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

* * *

(10) The sale at retail to or use by (i) any charitable organization, volunteer firemen's organization or nonprofit educational institution, or (ii) a religious organization for religious purposes of tangible personal property or services **other than pursuant to a construction contract:** Provided, however, That the exclusion of this clause shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used **and transferred to such organization or institution** in the construction, reconstruction, remodeling, **renovation**, repairs and maintenance of any real estate **structure, other than building machinery and equipment**, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs.

* * *

(29) The sale at retail or use of food and beverages for human consumption, 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 or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased (A) from persons engaged in the business of catering; or (B) from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile. For purposes of this clause, a bakery, a pastry shop, a donut shop, a delicatessen, a grocery store, a supermarket, a farmer's market [or], a convenience store **or a vending machine** shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served iced based products including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. For purposes of this subclause, beverages shall not include malt and brewed beverages and spirituous and vinous liquors but shall include soft drinks. 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.

* * *

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

* * *

(49) The sale at retail or use of food and beverages by nonprofit associations which support sports programs [and which operate at fixed locations on public property]. For purposes of this clause, the phrases:

(i) "nonprofit association" means an entity which is organized as a nonprofit corporation or nonprofit unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis;

[(ii) "fixed location" means a permanent structure or building;

(iii) "public property" means real property which is owned or leased by a county, municipality or school district or any authority of a county or municipality;]

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

(v) "support" means the funds raised from sales are used to pay the expenses of a sports program or the nonprofit association sells the food and beverages at a [fixed] location where a sports program is being conducted under this act.

* * *

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

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

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

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

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

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

(i) transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, nonprofit educational institution or religious organization for religious purposes, provided that the building machinery and equipment and services thereto are not used in any unrelated trade or business; or

(ii) transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions.

Section 4. Section 252 of the act, amended August 4, 1991 (P.L.97, No.22), is 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 5. Section 301(d) and (n.0) of the act, amended May 7, 1997, (P.L.85, No.7), are amended to read:

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

* * *

(d) "Compensation" means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

The term "compensation" shall not mean or include: (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, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits: Provided, That the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits; or (vii) any compensation received by United States servicemen serving in a combat zone; or (viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1954 which is licensed by the Commonwealth or a political subdivision thereof as a placement agency; or (ix) payments made by employers or labor unions for employee benefit programs covering social security or retirement; **or (x) personal use of an employer's owned or leased property or of employer-provided services.**

* * *

(n.0) "Partnership" means a domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity

that for Federal income tax purposes is [taxable] **classified** as a partnership.

* * *

Section 6. Section 303(a)(3)(ii) of the act, amended May 7, 1997 (P.L.85, No.7), is amended and the paragraph is amended by adding a subparagraph to read:

Section 303. Classes of Income.--(a) The classes of income referred to above are as follows:

* * *

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after the effective date of this amendatory act by the Commonwealth; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government as determined in accordance with accepted accounting principles and practices. For the purpose of this article:

* * *

[(ii) At the election of the taxpayer, the term "net gains or income" shall not include net gain in an amount not to exceed one hundred thousand dollars (\$100,000), or a pro rata part of one hundred thousand dollars (\$100,000) if the property is owned by more than one taxpayer, from the sale or exchange of the taxpayer's principal residence if the taxpayer has attained fifty-five years of age before the date of the sale or exchange. If the property is held by a husband and wife and they make a joint return for the taxable year of the sale or exchange and one spouse satisfies the age, ownership and use requirements of this subparagraph (ii) with respect to the property, then both husband and wife shall be treated as satisfying the age, ownership and use requirements of this subparagraph (ii).

(A) For purposes of this subparagraph (ii):

(I) In the case of an unremarried individual whose spouse is deceased on the date of sale or exchange of the property, if the deceased spouse, during the five-year period ending on the date of sale or exchange satisfied the holding and use requirements with respect to such property, then such individual shall be treated as satisfying holding and use requirements with respect to such property.

(II) The term "sale or exchange" shall include involuntary conversions such as the destruction, theft, seizure, requisition or condemnation of the property.

(III) The term "principal residence" shall mean the property that has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more during the five-year period ending on the date of the sale or exchange. In the case of property only a portion of which, during the five-year period ending on the date of the sale or exchange, has been owned or used by the taxpayer as the taxpayer's principal residence for periods aggregating three years or more, this subparagraph (ii) shall apply with respect to so much of the gain from the sale or exchange of such property as is determined under regulations prescribed by the department to be attributable to the portion of the property so owned and used by the taxpayer.

(IV) The term "used" shall include time the property was not used for rental purposes and was unoccupied by the taxpayer due to the taxpayer being in a hospital, nursing home or

personal care facility, or for a period of less than ninety consecutive days.

(B) The provisions of this subparagraph (ii) shall not apply to any sale or exchange made prior to July 1, 1987.

(C) An election under this subparagraph (ii) may be made or revoked at any time before the expiration of the period for making a claim for a refund of the tax imposed by this article for the taxable year in which the sale or exchange occurred.

(D) The provisions of this subparagraph (ii) shall be used only once during the lifetime of the taxpayer.]

* * *

(vii) The term "net gains or net income, less net losses," shall not include any gain or loss from the sale, exchange or other disposition of the taxpayer's principal residence.

(A) For purposes of this subparagraph, the term "principal residence" shall mean the property that has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more during the five-year period ending on the date of the sale, exchange or disposition: Provided, however, That the following shall apply:

(I) In the case of property only a portion of which, during the five-year period ending on the date of the sale, exchange or disposition, has been owned or used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of such property as is determined under regulations prescribed by the department to be attributable to that portion.

(II) In the case of a principal residence only a portion of which has never been subject to the allowance for depreciation, this subparagraph shall apply with respect to so much of the gain from the sale, exchange or disposition of such property as is determined under regulations prescribed by the department to be attributable to that portion.

(B) The provisions of this subparagraph shall not apply to a sale, exchange or disposition if, during the two-year period ending upon the date of the sale, exchange or disposition, there was a prior sale, exchange or disposition by the taxpayer of a principal residence unless the sale, exchange or disposition is by reason of a change in employment, health or, to the extent provided in regulations, unforeseen circumstances.

(C) The provisions of this subparagraph shall not apply to any sale, exchange or disposition made prior to January 1, 1998.

Section 7. Section 304(d) of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

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

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

(1) If the poverty income of the claimant during an entire taxable year is [six thousand three hundred dollars (\$6,300)] **six thousand five hundred dollars (\$6,500)** or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is [twelve thousand six hundred dollars (\$12,600)] **thirteen thousand dollars (\$13,000)** or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of [four thousand dollars (\$4,000)] **six thousand dollars (\$6,000)** if claimed by married claimants or of **six thousand five hundred dollars (\$6,500)** if claimed by a single claimant for the first

additional dependent and an additional income allowance of [four thousand dollars (\$4,000)] **six thousand dollars (\$6,000)** for each additional dependent of the claimant. For purposes of this subsection, a claimant shall not be considered to be married if:

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

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

(2) If the poverty income of the claimant during an entire taxable year does not exceed the poverty income limitations prescribed by clause (1) by more than the dollar category contained in subclauses (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of this clause, the claimant shall be entitled to a refund or forgiveness based on the per centage prescribed in such subclauses of any moneys which have been paid over to (or would 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)] **two hundred fifty dollars (\$250)**.

(ii) Eighty per cent if not in excess of [two hundred dollars (\$200)] **five hundred dollars (\$500)**.

(iii) Seventy per cent if not in excess of [three hundred dollars (\$300)] **seven hundred fifty dollars (\$750)**.

(iv) Sixty per cent if not in excess of [four hundred dollars (\$400)] **one thousand dollars (\$1,000)**.

(v) Fifty per cent if not in excess of [five hundred dollars (\$500)] **one thousand two hundred fifty dollars (\$1,250)**.

(vi) Forty per cent if not in excess of [six hundred dollars (\$600)] **one thousand five hundred dollars (\$1,500)**.

(vii) Thirty per cent if not in excess of [seven hundred dollars (\$700)] **one thousand seven hundred fifty dollars (\$1,750)**.

(viii) Twenty per cent if not in excess of [eight hundred dollars (\$800)] **two thousand dollars (\$2,000)**.

(ix) Ten per cent if not in excess of [nine hundred dollars (\$900)] **two thousand two hundred fifty dollars (\$2,250)**.

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

Section 8. Section 401(1) and (3)1(c) and 4 of the act, amended December 23, 1983 (P.L.370, No.90), June 30, 1995 (P.L.139, No.21) and May 7, 1997 (P.L.85, No.7), are amended to read:

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

(1) "Corporation." A corporation, joint-stock association, or a [business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, a common law] business trust or a limited liability company, that for Federal income tax purposes is [taxable] **classified** as a corporation, and (i) is doing business in this Commonwealth; or (ii) is carrying on activities in this Commonwealth; (iii) has capital or property employed or used in this Commonwealth; or (iv) owns property in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association or corporation. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust

companies, insurance and surety companies [and Pennsylvania S corporations]. The word shall not include:

1. Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

2. Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

3. Any [nonprofit] corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

4. Any corporation, **trust or other entity** organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state **that would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501)**.

* * *

(3) "Taxable income." 1. * * *

(c) Further additional deductions shall be allowed from taxable income in an amount equal to the amount of any reduction in an employer's deduction for wages and salaries as a result of the employer taking a credit for ["new jobs"] **its FICA tax obligation on its employees' tips** or "targeted jobs" pursuant to section [44B] **45B** or section 51 of the Internal Revenue Code.

* * *

4. (a) For taxable years beginning in 1982 through taxable years beginning in 1990 and for the taxable year beginning in 1995 and each taxable year thereafter, 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, 1992, 1993 and 1994, the net loss deduction allowed for years prior to 1991 shall be suspended, and no carryover of net losses from taxable years 1988, 1989, 1990, 1991, 1992 and 1993 shall be utilized in calculating net income for the 1991, 1992, 1993 and 1994 taxable years, but such net losses may be used as provided in paragraph (c) in calculating net income for the 1995 taxable year and for two taxable years thereafter.

(b) A net loss for a taxable year is the negative amount for said taxable year determined under subclause 1 or, if applicable, subclause 2. Negative amounts under subclause 1 shall be allocated and apportioned in the same manner as positive amounts.

(c) (1) The net loss deduction shall be the lesser of one million dollars (\$1,000,000) or the amount of the net loss or losses which may be carried over to the taxable year or taxable

income as determined under subclause 1 or, if applicable, subclause 2. In no event shall the net loss deduction include more than five hundred thousand dollars (\$500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

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

Taxable Year	Carryover
1981	1 taxable year
1982	2 taxable years
1983-1987	3 taxable years
1988	2 taxable years plus 1 taxable year starting with the 1995 taxable year
1989	1 taxable year plus 2 taxable year starting with the 1995 taxable year
1990-1993	3 taxable years starting with the 1995 taxable year
1994	1 taxable year
[1995	2 taxable years
1996 and thereafter	3 taxable years]
1995 and thereafter	10 taxable years

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. The total net loss deduction allowed in any taxable year shall not exceed one million dollars (\$1,000,000).

(d) No loss shall be a carryover from a taxable year when the corporation elects to be treated as a Pennsylvania S corporation pursuant to section 307 of Article III of this act to a taxable year when the corporation is subject to the tax imposed under this article.

(e) Paragraph (d) shall not prevent a taxable year when a corporation is a Pennsylvania S corporation from being considered a taxable year for determining the number of taxable years to which a net loss may be a carryover.

(f) For purposes of the net loss deduction, the short taxable year of a corporation, after the revocation or termination of an election to be treated as a Pennsylvania S corporation pursuant to sections 307.3 and 307.4 of Article III of this act, shall be treated as a taxable year.

(g) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of a corporation in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, the limitations provided in the Internal Revenue Code with respect to net operating losses shall apply for the purpose of computing the portion of a net loss carryover recognized under paragraph (3)4(c) of this section. When any acquiring corporation or a transferor corporation participated in the filing of consolidated returns to the Federal Government, the entitlement of the acquiring corporation to the Pennsylvania net loss carryover of the acquiring corporation or the transferor corporation will be determined as if separate returns to the Federal Government had been filed prior to the change in ownership by purchase, liquidation, acquisition of stock or reorganization.

* * *

Section 9. The definitions of "domestic entity" and "foreign entity" in section 601(a) of the act, amended May 7, 1997

(P.L.85, No.7), are amended, the definition of "processing" is amended by adding a paragraph and the subsection is amended by adding definitions to read:

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

* * *

"Corporation." Includes the following entities:

- (1) A corporation.
- (2) A joint-stock association.
- (3) A business trust.
- (4) A limited liability company other than a restricted professional company subject to 15 Pa.C.S. Ch. 89 Subch. I (relating to restricted professional companies) that is deemed to be a limited partnership pursuant to 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies).

* * *

"Domestic entity." Every corporation[, every joint-stock association, or every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, every common law business trust or every limited liability company other than a restricted professional corporation subject to 15 Pa.C.S. Ch. 89 (relating to limited liability companies)] organized or incorporated by or under any laws of the Commonwealth, other than corporations of the first class[, nonprofit corporations, trusts or other entities that are exempt organizations as defined in section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501), corporations organized as not-for-profit under the laws of the Commonwealth or the laws of any other state] and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a domestic entity. The term "domestic entity" shall not include:

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

(3) Any corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

(4) Any corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws

of any other state that would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

* * *

"Foreign entity." Every corporation[, joint-stock association, or every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies, common law business trust, or every limited liability company other than a restricted professional corporation subject to 15 Pa.C.S. Ch. 89 (relating to limited liability companies)] incorporated or organized by or under the laws of any jurisdiction other than the Commonwealth, and doing business in and liable to taxation within the Commonwealth or carrying on activities in the Commonwealth, including solicitation or either owning or having capital or property employed or used in the Commonwealth by or in the name of any limited partnership or joint-stock association, copartnership or copartnerships, person or persons, or in any other manner doing business within and liable to taxation within the Commonwealth other than [nonprofit corporations, trusts or other entities that are exempt organizations as defined in section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501), corporations organized as not-for-profit under the laws of a jurisdiction other than the Commonwealth,] banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a foreign entity. The term "foreign entity" shall not include:

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

(3) Any corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

(4) Any corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state that would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

* * *

"Processing." The following activities when engaged in as a business enterprise:

* * *

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

* * *

"Student loan assets." The term includes the following assets:

- (1) Student loan notes.
- (2) Federal, State or private subsidies or guarantees of student loans.
- (3) Instruments that represent a guarantee of debt, certificates or other securities issued by an entity created for the securitization of student loans or by a trustee on its behalf.
- (4) Contract rights to acquire or dispose of student loans and interest rate swap agreements related to student loans.
- (5) Interests in or debt obligations of other student loan securitization trusts or entities.
- (6) Cash or cash equivalents representing reserve funds or payments on or with respect to student loan notes, the securities issued by an entity created for the securitization of student loans or the other student loan-related assets. Solely for purposes of this definition, "cash or cash equivalents" shall include direct obligations of the United States Department of the Treasury, obligations of Federal agencies which obligations represent the full faith and credit of the United States, investment grade debt obligations or commercial paper, deposit accounts, Federal funds and banker's acceptances, prefunded municipal obligations, money market instruments and money market funds.

* * *

Section 10. Section 602 of the act, amended August 4, 1991 (P.L.97, No.22), 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) 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, 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] **rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a),** 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 three hundred dollar (\$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) 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 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] **rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a)**, 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 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: **and Provided further, That, except for the imposition of the minimum tax set forth in this section, the provisions of this section shall not apply to the taxation of so much of the capital stock value attributable to student loan assets owned or held by an entity created for the securitization of student loans or by a trustee on its behalf.**

(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) 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, 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] **rates provided in subsection (h) upon each dollar of the capital stock value as defined in section 601(a),** 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: **and Provided further, That, except for the imposition of the minimum tax set forth in this section, the provisions of this section shall not apply to the taxation of so much of the capital stock value attributable to student loan assets owned or held by an entity created for the securitization of student loans or by a trustee on its behalf.** 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.

(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] **provided in subsection (h)** to ten per cent of the capital stock value **as defined in section 601(a)**, but in no case shall the tax so computed be less than 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 three hundred dollar (\$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.

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

Taxable Year	Regular Rate Surtax		Total Rate
January 1, 1971, to December 31, 1986	10 mills	0	10 mills
January 1, 1987, to December 31, 1987	9 mills	0	9 mills
January 1, 1988, to December 31, 1990	9.5 mills	0	9.5 mills
January 1, 1991, to December 31, 1991	11 mills	2 mills	13 mills
January 1, 1992, to December 31, 1997	11 mills	1.75 mills	12.75 mills
January 1, 1998, and each year thereafter	11 mills	.99 mills	11.99 mills

Section 11. Section 602.2 of the act, added October 17, 1980 (P.L.1077, No.179), is amended to read:

Section 602.2. Family Farm Corporation Exemption.--(a) The provisions of section 602 shall not apply to family farm corporations. Family farm corporations shall be exempt from the tax imposed by section 602.

(b) (1) Family farm corporation means a Pennsylvania corporation at least seventy-five per cent of the assets of which are devoted to the business of agriculture, which business, for the purposes of this definition, shall not be deemed to include (i) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing; (ii) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets, or animals intended for use in sporting or recreational activities; (iii) fur farming; (iv) stockyard and slaughterhouse operations; or (v) manufacturing or processing operations of any kind: Provided, however, That at least seventy-five per cent of all of the stock of the corporation must be owned by members of the same family.

(2) Members of the same family shall mean an individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing and a spouse of any of the foregoing. Individuals related by the half blood or by legal adoption shall be treated as if they were related by the whole blood.

(3) **Assets devoted to the business of agriculture shall include leasing to members of the same family of assets which are directly and principally used for agricultural purposes.**

Section 12. Section 1101(a) of the act, amended June 30, 1995 (P.L.139, No.21), is amended to read:

Section 1101. Imposition of Tax.--(a) General Rule.--Every pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except [taxicabs, motor buses,] motor [omnibuses] **vehicles** and railroads, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company[, express company,] **and** 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[, **or** telegraph[, express, palace car or sleeping car] business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills with a surtax equal to five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from 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,] **except gross receipts derived from the sales of access to the Internet, as set forth in Article II, made to the ultimate consumer,** 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.

* * *

Section 13. The definitions of "family farm corporation" and "family farm partnership" in section 1101-C of the act, amended or added July 7, 1986 (P.L.318, No.77) and June 16, 1994 (P.L.279, No.48), are amended to read:

Section 1101-C. Definitions.--The following words when used in this article shall have the meanings ascribed to them in this section:

* * *

"Family farm corporation." A corporation of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of each class of stock of the corporation is continuously owned by members of the same family. **The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes.** The business of agriculture shall not be deemed to include:

- (1) Recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) The raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) Fur farming;
- (4) Stockyard and slaughterhouse operations; or
- (5) Manufacturing or processing operations of any kind.

"Family farm partnership." A partnership of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of the interests in the partnership are continuously owned by members of the same family. **The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes.** The business of agriculture shall not be deemed to include:

- (1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;
- (2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;
- (3) fur farming;
- (4) stockyard and slaughterhouse operations; or
- (5) manufacturing or processing operations of any kind.

* * *

Section 14. Section 1904-A of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

Section 1904-A. Tax Credit.--(a) Any business firm which engages or contributes to a neighborhood organization which engages in the activities of providing neighborhood assistance, **comprehensive service projects**, job training or education for individuals, community services or crime prevention in an impoverished area or private company which makes qualified investment to rehabilitate, expand or improve buildings or land located within portions of impoverished areas which have been designated as enterprise zones shall receive a tax credit as provided in section 1905-A if the secretary annually approves the proposal of such business firm or private company. The proposal shall set forth the program to be conducted, the impoverished area selected, the estimated amount to be invested in the program and the plans for implementing the program.

(b) The secretary is hereby authorized to promulgate rules and regulations for the approval or disapproval of such proposals by business firms or private companies and provide a listing of all applications received and their disposition in each fiscal year to the General Assembly by October 1 of the following fiscal year.

(c) The total amount of tax credit granted for programs approved under this act shall not exceed eighteen million dollars (\$18,000,000) of tax credit in any fiscal year.[, subject to the following:

- (1) three million two hundred fifty thousand dollars (\$3,250,000) of the total amount of tax credit shall be allocated for comprehensive service projects, but the secretary

may reallocate any unused portion of the three million two hundred fifty thousand dollars (\$3,250,000) for any other program authorized by this act if insufficient applications are made for comprehensive service projects; and

(2) four million dollars (\$4,000,000) of the total amount of tax credit shall be set aside exclusively for private companies which make qualified investments to rehabilitate, expand or improve buildings or land which promote community economic development and which occur in portions of impoverished areas which have been designated as enterprise zones.]

Section 15. Section 2004 of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2004. Reports.--(a) Each manufacturer whose malt or brewed beverages are sold in or imported into this Commonwealth shall, on or before the fifteenth day of each month, file with the department, on forms prescribed by it, a [verified] report showing for the preceding calendar month the quantities of such malt and brewed beverages:

(1) Manufactured by him in this Commonwealth, and constituting his beginning and ending inventory in this Commonwealth for the month.

(2) Sold by him in this Commonwealth for use in this Commonwealth or sold to an importing distributor or any person for importation into, and use in, this Commonwealth, specifically naming the distributors to whom such sales were made and the quantity sold to each.

(3) Sold to purchasers or persons outside this Commonwealth for exportation from, and use outside, this Commonwealth, or sold in other tax-exempt transactions, naming the purchasers and the quantity sold to each and specifically indicating those sales or transactions to which the tax imposed by this article is not applicable.

(4) Such additional information as the department may reasonably require to assure the accuracy of the tax computation and payment and the proper administration of this article.

(b) The tax payable on all malt or brewed beverages first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into, and use in, this Commonwealth during such month in the amount disclosed by the report, shall accompany the report and be paid by the manufacturer to the department.

(c) Persons licensed as "Public Service Licensees," under the provisions of any law of this Commonwealth relating to the sale of malt or brewed beverages:

(1) shall keep such records of the sales of such malt or brewed beverages in this Commonwealth as the department shall prescribe;

(2) shall, on or before the fifteenth day of each month, submit monthly reports of such sales and of such other information as the department may require to the department upon a form prescribed by said department; and

(3) shall pay the tax due on all such sales at the rate provided by the provisions of this article at the time such reports are filed.

(d) It is the intent and purpose of this section to require all manufacturers and other persons whose malt or brewed beverages are sold or used in this Commonwealth to pay the tax on all such malt or brewed beverages in the month following that in which such beverages are first sold in this Commonwealth for use in this Commonwealth or first sold to an importing distributor or any person for importation into and use in this Commonwealth, except that as to malt or brewed beverages sold

to public service licensees, the public service licensees, and not the manufacturer, shall report and pay the tax on all malt or brewed beverages sold by them within the Commonwealth.

Section 16. Section 2152 of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

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, **upon request**, 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 17. The act is amended by adding a section to read:

Section 3003.11. Restatement of Tax Liability Under Treaties.--In the absence of an express exemption from State income taxes, no treaty of the Federal Government shall be construed to exempt a corporation from the taxes imposed under Articles IV and VI. For purposes of determining "taxable income" under Article IV, any corporation not subject to Federal income taxation or Federal reporting requirements pursuant to such a treaty shall be required to file a report with the department showing the taxable income which would have been reported to and ascertained by the Federal Government had it not been exempted by the treaty.

Section 18. The following acts and parts of acts are repealed to the extent specified:

(1) Section 2508 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, absolutely.

(2) Act of June 22, 1931 (P.L.694, No.255), referred to as the Motor Carriers Gross Receipts Tax Act, absolutely.

(3) Section 2 of the act of May 16, 1935 (P.L.200, No.89), entitled "An act to further amend section twenty-three of the act, approved the first day of June, one thousand eight hundred eighty-nine (Pamphlet Laws, four hundred twenty), entitled 'A further supplement to an act, entitled "An act to provide revenue by taxation," approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine,' by extending the tax imposed by the act to certain gross receipts of municipally owned or operated public utilities, and public utility services previously exempt from the tax; increasing for a limited period of time the rate of tax imposed by the act; exempting street passenger railway companies and traction companies; and making an appropriation," absolutely.

(4) The act of July 9, 1986 (P.L.1216, No.108), known as the Enterprise Zone Municipal Tax Exemption Reimbursement Act, absolutely.

Section 19. The General Assembly declares that the intent of the addition of section 3003.11 of the act is to clarify existing law. The addition of section 3003.11 of the act shall not be construed to change existing law.

Section 20. For the purpose of implementing the addition of section 303(a)(3)(vii) of the act, the Department of Revenue shall promulgate regulations which are final-form regulations, under the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and which omit notice of proposed rulemaking under section 201 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law. Regulations under this section shall be submitted to the

Legislative Reference Bureau no later than November 24, 1998, for publication in the Pennsylvania Bulletin.

Section 21. This act shall apply as follows:

(1) The amendment or addition of sections 201(o)(17), (nn), (oo), (pp) and (qq), 204(10) and (57) and 252 of the act shall not apply to fixed-price construction contracts entered into prior to July 1, 1998, or entered into under the obligation of an unalterable, formal written bid issued prior to July 1, 1998.

(2) The following provisions shall apply to taxable years beginning after December 31, 1997:

(i) The amendment of section 301(d) and (n.0) of the act.

(ii) The amendment or addition of section 303(a)(3)(ii) and (vii) of the act.

(iii) The amendment of section 304(d) of the act.

(iv) The amendment of section 401(1) and (3)1(c) and 4 of the act.

(v) The amendment or addition of definitions in section 601(a) of the act.

(vi) The amendment of section 602 of the act.

(vii) The amendment of section 602.2 of the act.

(viii) The amendment of section 1101(a) of the act, except for the portion which refers to the Internet.

(ix) Section 18(2) and (3) of this act.

Section 22. This act shall take effect as follows:

(1) The following provisions shall take effect July 1, 1998:

(i) The amendment or addition of section 201(d)(14), (k)(8), (m), (o)(4) and (17), (nn), (oo), (pp), (qq), (rr), (ss) and (tt) of the act.

(ii) The amendment of section 202(c) of the act.

(iii) The amendment or addition of section 204(10), (29), (49), (55), (56) and (57) of the act.

(iv) The amendment of section 252 of the act.

(v) As much of the amendment of section 1101(a) of the act as refers to the Internet.

(vi) The amendment of section 1101-C of the act.

(vii) The amendment of section 1904-A of the act.

(viii) The amendment of section 2004 of the act.

(ix) The amendment of section 2152 of the act.

(x) Section 18(1) and (4) of this act.

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

APPROVED--The 23th day of April, A. D. 1998.

THOMAS J. RIDGE