

**TAX REFORM CODE OF 1971 - OMNIBUS AMENDMENTS**

**Act of Jun. 29, 2002, P.L. 559, No. 89**

**Cl. 72**

Session of 2002

No. 2002-89

HB 1848

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, for licenses, for collection, for bulk and auction sales and for crimes; providing, in local tax situs, for situs of mobile telecommunications services; further providing, in personal income tax, for definitions, for classes of income, for special tax provisions for poverty, for contributions, for bulk and auction sales and transfers; in corporate net income tax, for definitions, for imposition and for interest in unincorporated entities; and in capital stock and franchise tax, for definitions, for imposition, for deposit of proceeds, for interest in unincorporated entities and for applicability and expiration; establishing revenue-neutral reconciliation in utilities gross receipts tax; providing, in public utility realty tax and for surcharge; further providing, in realty transfer tax, for furnishing stamps; in cigarette tax, for incidence and rate, for floor tax, for commissions on sales and for disposition of certain funds; in research and development tax credit, for time limitations and for termination; in inheritance tax, for definitions, for transfers not subject to tax and for estate tax and for estate tax returns; providing for immediate assessment, settlement or collection and for depreciation of certain property in cities of the first class; and making repeals.

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

Section 1. Section 201(b), (nn), (qq) and (rr) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or added August 4, 1991 (P.L.97, No.22), June 30, 1995 (P.L.139, No.21) and April 23, 1998 (P.L.239, No.45), are amended, subsections (k) and (o) are amended by adding clauses and the section is amended by adding subsections 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 **or using** within this Commonwealth, **either** directly or [by] **through** a subsidiary,

**representative or an agent**, an office, distribution house, sales house, warehouse, service enterprise or other place of business[,]; or any agent of general or restricted authority, **or representative**, irrespective of whether the place of business, **representative** or agent is located here, permanently or temporarily, or whether the person or subsidiary maintaining [such] **the** place of business, **representative** or agent is authorized to do business within this Commonwealth[; or].

(2) [The engaging] **Engaging** in any activity as a business within this Commonwealth by any person, **either** directly or [by] **through** a subsidiary, **representative or an agent**, 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, **canvasser**, salesman, **representative or 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] **the** orders are accepted within or without this Commonwealth.

**(3.1) Entering this Commonwealth by any person to provide assembly, service or repair of tangible personal property, either directly or through a subsidiary, representative or an agent.**

**(3.2) Delivering tangible personal property to locations within this Commonwealth if the delivery includes the unpacking, positioning, placing or assembling of the tangible personal property.**

**(3.3) Having any contact within this Commonwealth which would allow the Commonwealth to require a person to collect and remit tax under the Constitution of the United States.**

**(3.4) Providing a customer's mobile telecommunications service deemed to be provided by the customer's home service provider under the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116). For purposes of this clause, words and phrases used in this clause shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.**

(4) The term "maintaining a place of business in this Commonwealth" shall not include:

(i) Owning or leasing of tangible or intangible property by a person who has contracted with an unaffiliated commercial printer for printing, provided that:

(A) the property is for use by the commercial printer; and  
(B) the property is located at the Pennsylvania premises of the commercial printer.

(ii) Visits by a person's employees or agents to the premises in this Commonwealth of an unaffiliated commercial printer with whom the person has contracted for printing in connection with said contract.

\* \* \*

(k) "Sale at retail."

\* \* \*

(19) The rendition for a consideration of a mobile telecommunications service.

\* \* \*

(o) "Use."

\* \* \*

(18) The obtaining of mobile telecommunications service by a customer.

\* \* \*

(nn) "Construction contract." A written or oral contract or agreement for the construction, reconstruction, remodeling, renovation or repair of [any] **real estate or a** real estate structure. The term shall not apply to services which are taxable under clauses (k) (14) and **(17) and (o) (12) and (15).**

\* \* \*

(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.] **A structure or item purchased by a construction contractor pursuant to a construction contract with:**

(1) a charitable organization, a volunteer firemen's organization, a nonprofit educational institution or a religious organization for religious purposes and which qualifies as an institution of purely public charity under the act of November 26, 1997 (P.L.508, No.55), known as the "Institutions of Purely Public Charity Act";

(2) the United States; or

(3) the Commonwealth, its instrumentalities or political subdivisions.

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 external 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 or item similar to any of the foregoing, whether or not the structure or item constitutes a fixture or is affixed to the real estate, or whether or not damage would be done to the structure or 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.

**(4) Mobile telecommunications services.**

\* \* \*

(aaa) "Mobile telecommunications service." Mobile telecommunications service as that term is defined in the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116).

(bbb) "Fiscal Code." The act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

(ccc) "Prepaid mobile telecommunications service." Mobile telecommunications service which is paid for in advance and which enables the origination of calls using an access number, authorization code or both whether manually or electronically dialed, if the remaining amount of units of the prepaid mobile telecommunications service is known by the service provider of the prepaid mobile telecommunications service on a continuous basis. The term does not include the advance purchase of mobile telecommunications service if the purchase is pursuant to a service contract between the service provider and customer and if the service contract requires the customer to make periodic payments to maintain the mobile telecommunications service.

Section 2. Section 202(e) of the act, added May 24, 2000 (P.L.106, No.23), is amended and the section is amended by adding subsections to read:

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

(e) (1) Notwithstanding any provisions of this article, the sale or use of prepaid telecommunications evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid telecommunications not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser's billing address.

(3) Notwithstanding clause (2), the sale or use of prepaid telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of six per cent of the receipts collected on each sale if the service provider elects to collect the tax imposed by this article on receipts of each sale. The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

(e.1) (1) Notwithstanding any other provision of this article, the sale or use of prepaid mobile telecommunications service evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b).

(2) The sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be subject to the tax imposed by subsections (a) and (b) and shall be deemed to occur at the purchaser's billing address or the location associated with the mobile telephone number or the point of sale, whichever is applicable.

(3) Notwithstanding clause (2), the sale or use of prepaid mobile telecommunications service not evidenced by the transfer of tangible personal property shall be taxed at the rate of six per cent of the receipts collected on each sale if the service provider elects to collect the tax imposed by this article on receipts of each sale. The service provider shall notify the department of its election and shall collect the tax on receipts of each sale until the service provider notifies the department otherwise.

\* \* \*

(g) Notwithstanding any other provisions of this article and in accordance with the Mobile Telecommunications Sourcing Act (4 U.S.C. § 116), the sale or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117(a) and (b) of the Mobile Telecommunications Sourcing Act shall be subject to the tax of six per cent of the purchase price, which tax shall be collected by the home service provider from the customer, and shall be paid over to the Commonwealth as herein provided if the customer's place of primary use is located within this Commonwealth, regardless of where the mobile telecommunications services originate, terminate or pass through. For purposes of this subsection, words and phrases used in this subsection shall have the same meanings given to them in the Mobile Telecommunications Sourcing Act.

Section 3. Section 204 introductory paragraph of the act is 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 any of the following:

\* \* \*

(62) The sale at retail or use of tangible personal property or services which are directly used in farming, dairying or agriculture when engaged in as a business enterprise whether or not the sale is made to the person directly engaged in the business enterprise or to a person contracting with the person directly engaged in the business enterprise for the production of food.

(63) The sale at retail or use of separately stated fees paid pursuant to 13 Pa.C.S. § 9525 (relating to fees).

Section 4. Section 208(c) of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 208. Licenses.--\* \* \*

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

one thousand five hundred (\$1,500) and, in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. The penalties imposed by this [section] **subsection** shall be in addition to any other penalties imposed by this article.

\* \* \*

Section 4.1. Section 237(b) of the act is amended by adding a clause to read:

Section 237. Collection of Tax.--\* \* \*

(b) Collection by Persons Maintaining a Place of Business in the Commonwealth.

\* \* \*

**(1.1) Every person not otherwise required to collect tax that delivers tangible personal property to a location within this Commonwealth and that unpacks, positions, places or assembles the tangible personal property shall collect the tax from the purchaser at the time of delivery and shall remit the tax to the department if the person delivering the tangible personal property is responsible for collecting any portion of the purchase price of the tangible personal property delivered and the purchaser has not provided the person with proof that the tax imposed by this article has been or will be collected by the seller or that the purchaser provided the seller with a valid exemption certificate. Every person required to collect tax under this clause shall be deemed to be selling or leasing tangible personal property or services, the sale or use of which is subject to the tax imposed under section 202.**

\* \* \*

Section 5. Section 240 of the act is amended to read:

Section 240. Bulk and Auction Sales.--[Every person who shall sell or cause] **A person that sells or causes** to be sold at auction, or [who shall sell or transfer] **that sells or transfers** in bulk, fifty-one per centum or more of any stock of goods, wares or merchandise of any kind, fixtures, machinery, equipment, buildings or real estate, involved in a business for which [such] **the** person is licensed or required to be licensed under the provisions of this article, or is liable for filing use tax returns in accordance with the provisions of this article, shall [give the department ten days' written notice of the sale or transfer prior to the completion of the transfer of such property. 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 act 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 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 satisfy

the requirements of section 1403 of "The Fiscal Code" as to taxes imposed by this article.] **be subject to the provisions of section 1403 of "The Fiscal Code."**

Section 6. Section 268(b) of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 268. Crimes.--\* \* \*

(b) Other Crimes.

(1) Except as otherwise provided by subsection (a) of this section, any person 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), (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 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 to collect the tax from the purchaser and timely remit the same to the department, and any person who shall wilfully fail or neglect 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[.]: **and Provided further, That advertising tax-included prices shall be permissible, if the prepaid services are sold by the service provider, for prepaid telecommunications services not evidenced by the transfer of tangible personal property or for prepaid mobile telecommunications services.**

(2) The penalties imposed by this section shall be in addition to any other penalties imposed by any provision of this article.

Section 7. The act is amended by adding a section to read:

**Section 203-A. Situs of Local Sales Tax on Mobile Telecommunications Services.--(a) For purposes of this article only, the situs of the sales or use of mobile telecommunications services which are deemed to be provided to a customer by a home service provider under section 117(a) and (b) of the Mobile Telecommunications Sourcing Act ( 4 U.S.C. § 116 ) shall be the**

customer's place of primary use regardless of where the mobile telecommunications services originate, terminate or pass through.

(b) For purposes of this section, words and phrases used in this section shall have the meanings given to them in the Mobile Telecommunications Sourcing Act.

Section 8. Section 301 introductory paragraph of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

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

\* \* \*

Section 9. Section 303 of the act is amended by adding subsections to read:

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

(a.1) Income shall be computed under the method of accounting on the basis of which the taxpayer regularly computes income in keeping the taxpayer's books. If the department determines that no method has been regularly used or the method used does not clearly reflect income, the computation of income shall be made under a method which, in the opinion of the department, clearly reflects income.

(a.2) In computing income, a depreciation deduction shall be allowed for the exhaustion, wear and tear and obsolescence of property being employed in the operation of a business or held for the production of income. The deduction must be reasonable and shall be computed in accordance with the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life under the straight-line method or other method prescribed by the department, except a taxpayer may use any depreciation method, recovery method or convention that is also used by the taxpayer in determining Federal net taxable income if, when placed in service, the property has the same adjusted basis for Federal income tax purposes and the method or convention is allowable for Federal income tax purposes at the time the property is placed in service or under the Internal Revenue Code of 1986, whichever is earlier. The basis of property shall be reduced, but not below zero, for depreciation by the greater of:

(1) The amount deducted on a return and not disallowed, but only to the extent the deduction results in a reduction of income; and

(2) The amount allowable using the straight-line method of depreciation computed on the basis of the property's adjusted basis at the time placed in service, reasonably estimated useful life and net salvage value at the end of its reasonably estimated useful economic life, regardless of whether the deduction results in a reduction of income.

(a.3) The cost of property commonly referred to as Section 179 Property may be treated as a deductible expense only to the extent allowable under the version of section 179 of the Internal Revenue Code in effect at the time the property is placed in service or under section 179 of the Internal Revenue Code of 1986 (26 U.S.C. § 179), whichever is earlier. The basis of Section 179 Property shall be reduced, but not below zero, for costs treated as a deductible expense. The amount of the



**reduction shall be the amount deducted on a return and not disallowed, regardless of whether the deduction results in a reduction of income.**

\* \* \*

Section 10. Section 304(d) of the act, amended December 13, 1991 (P.L.373, No.40), April 23, 1998 (P.L.239, No.45) and June 22, 2001 (P.L.353, No.23), is amended to read:

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

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

(1) If the poverty income of the claimant during an entire taxable year is six thousand five hundred dollars (\$6,500) or less, or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is thirteen thousand dollars (\$13,000) or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of [eight thousand five hundred dollars (\$8,500)] **nine thousand dollars (\$9,000)** for each dependent of the claimant. For purposes of this subsection, a claimant shall not be considered to be married if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 315.6. Contribution for Korea/Vietnam Memorial National Education Center.--(a) For tax years 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004, the department shall provide**

a space on the face of the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount from the individual's tax refund to the Korea/Vietnam Memorial National Education Center.

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

(c) The department shall determine annually the total amount designated by individual taxpayers under this section and shall report the amount to the State Treasurer, who shall prepare the appropriate documentation and transfer the designated amount from the General Fund to the Korea/Vietnam Memorial National Education Center.

(d) The department shall provide adequate information regarding the center and its purposes in its instructions for tax years 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 which accompany Pennsylvania individual income tax return forms to include the address of the Korea/Vietnam Memorial National Education Center to which contributions may be sent by taxpayers who wish to make additional contributions to the center.

(e) On or before March 31 of each year, the Korea/Vietnam Memorial National Education Center shall submit a report detailing contributions received and activities undertaken during the prior calendar year to the Military and Veterans' Affairs Committee of the Senate and the Veterans Affairs and Emergency Preparedness Committee of the House of Representatives.

(f) This section shall expire December 31, 2005.

Section 12. Section 321.1 of the act, added August 4, 1991 (P.L.97, No.22), is amended to read:

Section 321.1. Bulk and Auction Sales and Transfers, Notice.--(a) [Every employer, who] **An employer that** is liable for filing returns in accordance with the provisions of this part and [who shall sell or cause] **either sells or causes** to be sold at auction, or [who shall sell or transfer] **sells or transfers** 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.] **the employer shall be subject to the provisions of section 1403 of "The Fiscal Code."**

Section 13. Section 401(1) and (3)1(1), 2(a)(3) and 4(c) of the act, amended May 12, 1999 (P.L.26, No.4) and June 22, 2001 (P.L.353, No.23), are amended and subclause (3)1 is amended by adding paragraphs to read:

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

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

(i) A corporation.

(ii) A joint-stock association.

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

The [word "corporation" shall not include an entity subject to taxation under Article VII, VIII, IX or XV. The word shall] **term does** not include:

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

2. A business trust which qualifies as a regulated investment company under section 851 of the Internal Revenue Code **of 1986 ( 26 U.S.C. § 856 (i) )** and which is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

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

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

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 ([Public Law 99-514,] 26 U.S.C. § 501);

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

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

\* \* \*

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

[(1) For the purpose of computing the depreciation deduction which would have been allowable under section 167 of the Internal Revenue Code of 1954, as amended, prior to amendment by the Economic Recovery Tax Act of 1981: (i) tax preference items as set forth above shall not be included; (ii) property shall be depreciated for a period and with a method consistent with that employed for similar property in prior years; and (iii) for taxable years 1982 and 1983, no deduction shall be allowed for additional first year depreciation on section 179 property.]

\* \* \*

(q) Notwithstanding paragraph (a), taxable income shall include the amount of the deduction for depreciation of qualified property claimed and allowable under section 168(k) of the Internal Revenue Code of 1986 (26 U.S.C. § 168(k)).

(r) Notwithstanding paragraph (a), if a deduction for depreciation of qualified property was included in taxable income in accordance with paragraph (q), an additional deduction for depreciation of the qualified property shall be allowed from taxable income until the total amount included as taxable income under paragraph (q) has been claimed. The additional deduction shall be equal to the product of taking three sevenths of the amount of the deduction for depreciation of the qualified property allowable under section 167 of the Internal Revenue Code of 1986 (26 U.S.C. § 167), not including the amount of the deduction for depreciation of the qualified property claimed and allowable under section 168(k) of the Internal Revenue Code of 1986 (26 U.S.C. § 168(k)), for the tax year.

(s) With respect to qualified property which is sold or otherwise disposed of during a taxable year by a taxpayer and for which depreciation was included as taxable income under paragraph (q), an additional deduction shall be allowed from taxable income to the extent the amount of depreciation claimed under section 168(k) of the Internal Revenue Code of 1986 (26 U.S.C. § 168(k)) on the qualified property has not been recovered through the additional deductions provided by paragraph (r).

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] **1986**, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

\* \* \*

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

\* \* \*

4. \* \* \*

(c) (1) The net loss deduction shall be the lesser of two million dollars (\$2,000,000) or the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2. In no event shall the net loss deduction include more than five hundred thousand dollars (\$500,000), in the aggregate, of net losses from taxable years 1988 through 1994.

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

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

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule. The total net loss deduction allowed in any taxable year shall not exceed two million dollars (\$2,000,000).

\* \* \*

Section 14. Section 402 of the act, amended June 30, 1995 (P.L.139, No.21), 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 through the calendar year 1994 and at the rate of nine and ninety-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during the calendar year 1995 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 through calendar year 1993 and with an additional surtax equal to one and forty-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and accruing to such corporation during calendar year 1994 and with no surtax during calendar year 1995 and 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 through the fiscal year commencing in 1994 and at the rate of nine and ninety-nine 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 1995 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 through fiscal year 1993 and with an additional surtax equal to one and forty-nine hundredths per cent per annum upon each dollar of taxable income of such corporation received by and

accruing to such corporation during fiscal year 1994 and with no surtax during the fiscal year commencing in 1995 and 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.] **(a) A corporation shall be subject to and shall pay an excise tax for exercising, whether in its own name or through any person, association, business trust, corporation, joint venture, limited liability company, limited partnership, partnership or other entity, any of the following privileges:**

**(1) Doing business in this Commonwealth.**

**(2) Carrying on activities in this Commonwealth, including solicitation which is not protected activity under the act of September 14, 1959 (Public Law 86-272, 15 U.S.C. § 381 et seq.).**

**(3) Having capital or property employed or used in this Commonwealth.**

**(4) Owning property in this Commonwealth.**

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

<b>Taxable Year</b>	<b>Tax Rate</b>
<b>January 1, 1995, and each taxable year thereafter</b>	<b>9.99%</b>

**(c) An entity subject to taxation under Article VII, VIII, IX or XV shall not be subject to the tax imposed by this article.**

Section 15. The act is amended by adding a section to read:

**Section 402.2. Interests in Unincorporated Entities.--For purposes of this article, a corporation's interest in an entity which is not a corporation shall be considered a direct ownership interest in the assets of the entity rather than an intangible interest.**

Section 16. The definitions of "corporation," "domestic entity," "entity" and "foreign entity" in section 601(a) of the act, amended June 22, 2001 (P.L.353, No.23), are amended to read:

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

\* \* \*

"Corporation." [Includes]

**(A) Any of the following entities:**

**(1) A corporation.**

**(2) A joint-stock association.**

**(3) A business trust.**

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

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

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

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

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

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

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

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

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

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

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

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

(i) Created or managed by an entity which is subject to the tax imposed by Article VII or XV or which is an affiliate of the entity which shares at least eighty per cent common ownership.

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

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

\* \* \*

"Domestic entity." [Every] A corporation organized [or incorporated by or] under [any] the laws of the Commonwealth[, other than corporations of the first class and cooperative agricultural associations not having capital stock and not conducted for profit, or an entity subject to taxation under Article VII, VIII, IX or XV is a domestic entity. The term "domestic entity" shall not include:

(1) A business trust which qualifies as a real estate investment trust under section 856 of the Internal Revenue Code



or which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or a related business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A 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 which owns all of the stock of the qualified real estate investment trust subsidiary.

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

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

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

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986;

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

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

(5) A domestic business trust provided:

(i) the trust is created or managed by an entity subject to the tax imposed by Article VII or XV or by an affiliate of the entity which shares at least eighty per cent common ownership;

(ii) the trust is created and managed for the purpose of facilitating the securitization of intangible assets; and

(iii) the trust is classified as a partnership or a disregarded entity for Federal income tax purposes.]

["Entity." Any domestic or foreign entity.]

"Foreign entity." [Every] **A** corporation [incorporated or] organized by or under the laws of any jurisdiction other than the Commonwealth[, and doing] **which exercises, whether in its own name or through any individual, association, business trust, corporation, joint venture, limited liability company, limited partnership, partnership or other entity, any of the following privileges:**

(1) **Doing** business in [and liable to taxation within the] **this** Commonwealth [or carrying].

(2) **Carrying** on activities in [the] **this** Commonwealth, including solicitation [or either owning or having].

(3) **Having** capital or property employed or used in [the] **this** 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]

(4) **Owning property in this** Commonwealth. [other than an entity subject to tax under Article VII, VIII, IX or XV is a foreign entity. The term "foreign entity" shall not include:

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

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

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

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

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986;

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986; or

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

(5) A foreign business trust provided:

(i) the trust is created or managed by an entity subject to the tax imposed by Article VII or XV or by an affiliate of the entity which shares at least eighty per cent common ownership;

(ii) the trust is created and managed for the purpose of facilitating the securitization of intangible assets; and

(iii) the trust is classified as a partnership or a disregarded entity for Federal Income Tax purposes.]

\* \* \*

Section 17. Section 602(h) of the act, amended May 24, 2000 (P.L.106, No.23), is amended and the section is amended by adding a subsection to read:

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

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

Taxable Year	Regular Rate	Surtax	Total Rate
January 1, 1971, to December 31, 1986	10 mills	0	10 mills
January 1, 1987, to December 31, 1987	9 mills	0	9 mills

January 1, 1988, to December 31, 1990	9.5 mills	0	9.5 mills
January 1, 1991, to December 31, 1991	11 mills	2 mills	13 mills
January 1, 1992, to December 31, 1997	11 mills	1.75 mills	12.75 mills
January 1, 1998, to December 31, 1998	11 mills	.99 mills	11.99 mills
January 1, 1999, to December 31, 1999	10.99 mills	0	10.99 mills
January 1, 2000, to December 31, 2000	8.99 mills	0	8.99 mills
January 1, 2001, to December 31, 2001	7.49 mills	0	7.49 mills
[January 1, 2002, to December 31, 2002	6.49 mills	0	6.49mills
January 1, 2003, to December 31, 2003	5.49 mills	0	5.49 mills
January 1, 2004, to December 31, 2004	4.49 mills	0	4.49 mills
January 1, 2005, to December 31, 2005	3.49 mills	0	3.49 mills
January 1, 2006, to December 31, 2006	2.49 mills	0	2.49 mills
January 1, 2007, to December 31, 2007	1.49 mills	0	1.49 mills
January 1, 2008, to December 31, 2008	.49 mills	0	.49 mills]
<b>January 1, 2002, to December 31, 2002</b>	<b>7.24 mills</b>	<b>0</b>	<b>7.24 mills</b>
<b>January 1, 2003, to December 31, 2003</b>	<b>6.99 mills</b>	<b>0</b>	<b>6.99 mills</b>
<b>January 1, 2004, to December 31, 2004</b>	<b>5.99 mills</b>	<b>0</b>	<b>5.99 mills</b>
<b>January 1, 2005, to December 31, 2005</b>	<b>4.99 mills</b>	<b>0</b>	<b>4.99 mills</b>
<b>January 1, 2006, to December 31, 2006</b>	<b>3.99 mills</b>	<b>0</b>	<b>3.99 mills</b>
<b>January 1, 2007, to December 31, 2007</b>	<b>2.99 mills</b>	<b>0</b>	<b>2.99 mills</b>
<b>January 1, 2008, to December 31, 2008</b>	<b>1.99 mills</b>	<b>0</b>	<b>1.99 mills</b>
<b>January 1, 2009, to December 31, 2009</b>	<b>.99 mills</b>	<b>0</b>	<b>.99 mills</b>

(i) An entity subject to taxation under Article VII, VIII, IX or XV shall not be subject to the tax imposed by this article.

Section 18. Section 602.3 of the act, amended May 12, 1999 (P.L.26, No.4), is amended to read:

Section 602.3. [Deposit of Proceeds; Appropriation]  
**Hazardous Sites Cleanup Fund.--**(a) [The proceeds 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 Hazardous Sites Cleanup Fund. 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.] **There is hereby created a special fund to be known as the Hazardous Sites Cleanup Fund.**

(a.1) The Governor shall submit to the General Assembly with his annual budget the expected ending balance for the current fiscal year of the Hazardous Sites Cleanup Fund. If the expected ending balance is less than five million dollars, the Governor shall authorize the Secretary of the Budget to transfer from the General Fund an amount equal to one-quarter mill of the tax collected under this article for the fiscal year. A transfer required by this subsection shall be made by two equal payments on or before December 15 and June 15 of the succeeding fiscal year.

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

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

**Section 602.6. Interest in Unincorporated Entities.--For purposes of this article, a corporation's interest in an entity which is not a corporation shall be considered a direct ownership interest in the assets of the entity rather than an intangible interest.**

Section 20. The heading of Part IV of Article VI of the act is amended to read:

#### PART IV

REPEAL; [EFFECTIVE DATE] **APPLICABILITY; EXPIRATION**

Section 21. Section 606 of the act, amended May 24, 2000 (P.L.106, No.23), is amended to read:

Section 606. [Effective Date.--(a) Except as provided in subsection (b), this article shall take effect immediately, and] **Applicability.--Except as provided in section 607, the tax imposed under this article shall apply to taxable years beginning January 1, 1971 and thereafter.**

[ (b) This article shall expire for taxable years beginning after December 31, 2008.]

Section 22. The act is amended by adding a section to read:

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

Section 22.1. Section 1101(d) of the act is repealed.

Section 22.2. The act is amended by adding a section to read:

**Section 1101.2. Establishment of Revenue-Neutral Reconciliation.--Notwithstanding the provisions of 66 Pa.C.S. § 2810(c)(1) (relating to revenue-neutral reconciliation), the rate of tax established under 66 Pa.C.S. § 2810(c)(2) for the period beginning January 1, 2002, shall continue in force without further adjustment for periods beginning January 1, 2003, and thereafter, and the Secretary of Revenue shall not deliver any further reports under 66 Pa.C.S. § 2810(c)(3) .**

Section 22.3. The act is amended by adding sections to read:

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

**(b) By August 1, 2003, and by each August 1 thereafter, the State Treasurer shall certify to the department a report containing the total reduction of liabilities, paid or unpaid, to the Commonwealth granted by the Board of Finance and Revenue which are the result of a final order not appealed by the**

department for claims made under this article during the prior fiscal year.

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

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

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

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

Section 23. Section 1106-C of the act, amended July 2, 1986, (P.L.318, No.77), is amended to read:

Section 1106-C. [Furnishing Stamps] **Stamps, Commissions, Payments and Transfers.**--(a) The department shall prescribe, prepare and furnish stamps to each recorder of deeds, of such denominations and quantities as may be necessary, for the payment of the tax imposed and assessed by this article.

(b) The department shall allow each county a commission equal to one per cent of the face value of the stamps sold or two hundred fifty dollars (\$250) whichever is greater. The recorder of deeds shall pay the commission herein allowed to the general fund of the county. The department shall pay the premium or premiums on any bond or bonds required by law to be procured by recorder of deeds for the performance of their duties under this article.

(c) All moneys paid [into the State Treasury during the effective period of] **in accordance with** this article shall be credited to the General Fund.

(d) **At the end of each month, the State Treasurer shall transfer from the General Fund to the Keystone Recreation, Park and Conservation Fund an amount equal to the tax credited to the General Fund under subsection (c) for the previous month multiplied by the applicable transfer factor. The applicable transfer factor for each month shall be as follows:**

Month	Transfer Factor
July 1994 through December 2001	0.15
January 2002 through June 2002	0.10
July 2002 through June 2003	0.075
July 2003 and each	

The State Treasurer shall transfer from the Keystone Recreation, Park and Conservation Fund to the General Fund an amount equal to the difference between the amount transferred to the Keystone Recreation, Park and Conservation Fund from January 1, 2002, and the effective date of this subsection and the amount authorized by this subsection.

Section 24. Sections 1206 and 1206.1 of the act, amended or added August 4, 1991 (P.L.97, No.22), are amended to read:

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

Section 1206.1. Floor Tax.--[Any] **(a) A 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] **three and forty-five hundredths** cents per cigarette. The tax shall be [reported and paid] **paid and reported** on a form prescribed by the department **within ninety days of the effective date of this section.** [In]

**(b) If a cigarette dealer fails to file the report required by subsection (a) or fails to pay the tax imposed by subsection (a), the department may, in addition to the interest and penalties provided in section 1278 [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], do any of the following:**

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

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

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

Section 25. Section 1216 of the act, added December 21, 1981 (P.L.482, No.141), is amended to read:

Section 1216. Commissions on Sales.--[Cigarette stamping agencies] **A cigarette stamping agent** shall be entitled to a commission [of three per cent] **for the agent's services and expenses in affixing cigarette tax stamps. The commission shall be equal to one and twenty-five hundredths per cent of the total value of [all] Pennsylvania cigarette tax stamps purchased by [them] the agent from the department or its authorized agents to be used [by them] in the stamping of packages of cigarettes for sale within [the] this Commonwealth [of Pennsylvania, said commission to be paid to the cigarette stamping agent as compensation for his or her services and expenses as agent in affixing such stamps. Said cigarette stamping agencies shall be entitled to]. The cigarette stamping agent may deduct from the moneys to be paid [by them for such] to the department or its authorized agents for the stamps an amount[, equal to three per cent] equal to one and twenty-five hundredths per cent of the value of [said] the stamps purchased [by them when such cigarette stamping agencies have purchased said Pennsylvania cigarette tax stamps directly from the department or its**

authorized agents]. This section shall not apply to purchases of stamps by a cigarette stamping [agency] **agent** in an amount less than one hundred dollars (\$100).

Section 26. Section 1296 of the act, amended May 7, 1997 (P.L.85, No.7), is amended to read:

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. Beginning July 1, 1993, two thirty-firsts of cigarette tax receipts shall be transferred into the Agricultural Conservation Easement Purchase Fund, and beginning January 1, 1997, three 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.] **Receipts from the tax imposed by this article shall be deposited into the General Fund. Twenty million four hundred eighty-five thousand dollars (\$20,485,000) of the receipts deposited into the General Fund in accordance with this section shall be transferred annually to the Agricultural Conservation Easement Purchase Fund. Thirty million seven hundred thirty thousand dollars (\$30,730,000) of the receipts deposited into the General Fund in accordance with this section shall be transferred annually to the Children's Health Fund for health care for indigent children. The transfers required by this section shall be made in two equal payments by July 15 and January 15.**

Section 27. Sections 1707-B and 1712-B of the act, added May 7, 1997 (P.L.85, No.7), are amended to read:

Section 1707-B. Time Limitations.--A taxpayer is not entitled to a research and development tax credit for Pennsylvania qualified research and development expenses incurred in taxable years ending after December 31, [2004] **2006**. The termination date in section 41(h) of the Internal Revenue Code **of 1986 (Public Law 99-514, 26 U.S.C. § 41 (h))** does not apply to a taxpayer who is eligible for the research and development tax credit under this article for the taxable year in which the Pennsylvania qualified research and development expense is incurred.

Section 1712-B. Termination.--The department shall not approve a research and development tax credit under this article for taxable years ending after December 31, [2004] **2006**.

Section 28. Section 2102 introductory paragraph of the act is amended and the section is amended by adding definitions to read:

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

\* \* \*

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

\* \* \*

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

\* \* \*

Section 29. Sections 2111(r), 2117(a) and (b) and 2145(b) of the act, added August 4, 1991 (P.L.97, No.22), are amended to read:

Section 2111. Transfers Not Subject to 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 **the** decedent or designated in accordance with the terms of the plan, are exempt from inheritance tax to the extent that **the** decedent before his death did not otherwise have the right to possess (including proprietary rights at termination of employment), enjoy, assign or anticipate the payment made. In addition to this exemption, whether or not the decedent possessed any of these rights, the payments are exempt from inheritance tax to the same extent that they are exempt from Federal estate tax [under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended, any supplement to the code or any similar provision in effect from time to time for Federal estate tax purposes], except that a payment which would otherwise be exempt for Federal estate tax purposes if it had not been made in a lump-sum or other nonexempt form of payment shall be exempt from inheritance tax even though paid in a lump-sum or other form of payment. The proceeds of life insurance otherwise exempt under subsection (d) shall not be subject to inheritance tax because they are paid under a pension, stock bonus, profit-sharing, H.R.10 or other retirement plan.

Section 2117. Estate Tax.--(a) In the event that a Federal estate tax [is] **would be** 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] **Code** of 1986 ( **26 U.S.C. § 2011** ); or

(2) an amount computed by multiplying the maximum credit for state death taxes allowable under section 2011 of the Internal Revenue Code of 1986 ( **26 U.S.C. § 2011** ) by a fraction, the numerator of which is the value of the real property and tangible personal property to the extent included



in the decedent's gross estate for Federal estate tax purposes and having a situs in the other state and the denominator of which is the value of the decedent's gross estate for Federal estate tax purposes.

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

\* \* \*

Section 2145. Estate Tax **Return**.--\* \* \*

(b) The personal representative of every decedent or, if there is no personal representative, any other fiduciary [charged] **that would be chargeable** by law with the duty of filing a Federal estate tax return, within [one month of the filing or receipt of the return] **ten months after the decedent's death** 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] **tax return prescribed by the department, any return filed under section 6018 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6018 ) as amended** 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.

\* \* \*

Section 30. Section 3003.1(c) of the act is repealed.

Section 30.1. Section 3003.2 of the act, amended May 7, 1997 (P.L.85, No.7) and May 12, 1999 (P.L.26, No.4), is amended to read:

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

(1) Every corporation subject to the corporate net income tax imposed by Article IV of this act, commencing with the calendar year 1986 and fiscal years beginning during the calendar year 1986 and each taxable year thereafter, [s1451] **shall** make payments of estimated corporate net income tax.

(2) Every corporation subject to the capital stock and franchise tax imposed by Article VI of this act, commencing with the calendar year 1988 and fiscal years beginning during the calendar year 1988 and each taxable year thereafter, shall make payments of estimated capital stock and franchise tax during its taxable year as provided herein.

(3) Every "mutual thrift institution" or "institution" subject to the tax imposed by Article XV of this act, commencing with the calendar year 1992 and fiscal years beginning during

the calendar year 1992 and each taxable year thereafter, shall make payments of estimated mutual thrift institution tax during its taxable year.

(4) Every "insurance company" subject to the tax imposed by Article IX of this act shall make payments of estimated insurance premiums tax during its taxable year.

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

**(6) Every person subject to the surcharge imposed by section 1111-A of this act shall make payments of estimated public utility realty surcharge during its taxable year.**

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

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

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

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

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

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

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

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

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

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

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

(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 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 equal installments on or before the fifteenth day of the third, sixth, ninth and twelfth months of the taxable year. 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) Payment of the estimated mutual thrift institution tax shall be made in equal installments on or before the fifteenth day of the 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.

(4) Payment of the estimated insurance premiums tax shall be made in a single installment on or before the fifteenth day of March of the taxable year. The remaining portion of the insurance premiums tax due, if any, shall be paid upon the date the insurance company's annual report is required to be filed without reference to any extension of time for filing the report.

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

**(6) Payment of the estimated public utility realty surcharge shall be made in a single installment on or before the fifteenth day of March of the taxable year. The remaining portion of the public utility realty surcharge due, if any, shall be paid upon the date the report is required to be filed without reference to any extension of time for filing the report.**

(d) If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the amount of each remaining installment due, if any, shall be such as to bring the total installment payments made on account of the tax due for the current year up to an amount that would have been due had the new estimate been the basis for paying all previous installments.

(e) Every taxpayer with a taxable year of less than twelve months shall pay such installments as become due during the course of its taxable year and pay the remaining tax due on or before the due date of the annual report (determined without regard to any extension of time for filing).

(f) At the election of the taxpayer, any installment of estimated tax may be paid before the date prescribed for its payment.

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

(h) The tax imposed on shares of institutions and title insurance companies shall be paid in the manner and within the time prescribed by Article VII or VIII of this act, but subject to the interest provided in section 3003.3 of this article.

(i) Whenever the amount shown as due on the annual report, including any settlement of the annual report, is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund, at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or at the initiative of the department. If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon settlement or resettlement, interest shall be calculated on the amount of the underpayment from the date credit was applied, assigned or refunded.

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

**Section 3003.14. Immediate Assessment, Settlement or Collection to Prevent Tax Avoidance.--**(a) Notwithstanding Articles IV, VIII and X of the act of April 9, 1929 (P.L.343, No.176) , known as "The Fiscal Code," and section 407 of this act, the Department of Revenue may make an immediate assessment or settlement of any tax imposed in accordance with Article II, IV or VI and any interest or penalty due if the department finds that, without immediate action by the department, the tax, interest or penalty due will be in jeopardy of not being collected because the taxpayer intends to do any of the following without paying the tax, interest or penalty due:

- (1) Immediately depart this Commonwealth.
  - (2) Remove property from this Commonwealth used in activities which are subject to any tax imposed by this act.
  - (3) Discontinue doing business in this Commonwealth.
  - (4) Do any other act which would prejudice or render ineffective, either in whole or in part, proceedings to assess, settle or collect any tax, interest or penalty due.
- (b) The department shall give notice to the person and a demand for filing an immediate return or report and paying the tax, interest or penalty due.
- (c) The department may issue a civil citation to collect any assessment or settlement made under subsection (a).
- (d) Except as provided in subsection (e), the department may compel security, including the detention of tangible personal property, for any tax, interest or penalty assessed or settled under subsection (a).

(e) The department may not detain tangible personal property of a taxpayer under this section if the taxpayer does any of the following:

- (1) Presents a valid Pennsylvania sales tax license to the authorized employes of the department.
- (2) Posts bond in an amount to be determined by the department.
- (3) Pays the tax, interest or penalty due under this section.

Section 31.1. Notwithstanding any law to the contrary, for purposes of calculating net income for determining business privilege tax liability in any city of the first class, net income shall be calculated using the provisions of section 401(3)1(q), (r) and (s) of the act with respect to the depreciation of qualified property claimed and allowable under section 168(k) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 168(k)). For the purposes of this section, references to taxable income in section 401(3)1(q), (r) and (s) shall be treated as references to net income.

Section 31.2. The Pennsylvania Emergency Management Agency shall conduct a study of the manner in which funding sources may be established to improve the delivery of services provided by volunteer fire companies and volunteer emergency services in this Commonwealth. The study may include the consideration of a monthly surcharge on the usage of cellular and wireless telephones to fund the improvement of the delivery of services provided by volunteer fire companies and volunteer emergency services as well as payment for any indebtedness which may be incurred for the improvement and enhancement of such volunteer services, including the recruitment, retention and training of volunteer personnel and the purchase of equipment for firefighting, ambulance services, rescue services, emergency medical services and basic and advanced life support services. By September 30, 2002, the agency shall provide a report to the Committee on Veterans Affairs and Emergency Preparedness in the House of Representatives and the Committee on Communications and High Technology in the Senate with recommendations regarding the amount of funding necessary and the scope of services required to meet these needs.

Section 31.3. The question of incurring indebtedness of up to \$100,000,000 for the establishment of a program that utilizes capital and other related methods to enhance and improve the delivery of volunteer fire and volunteer emergency services in this Commonwealth, as authorized by statute, shall be submitted to the electors at the next general election following the effective date of this section. The Secretary of the Commonwealth shall forthwith certify the question to the county boards of election, which question shall be in substantially the following form:

Do you favor the incurring of indebtedness of up to \$100,000,000 for the purpose of establishing a program that utilizes capital and other related methods to enhance and improve the delivery of volunteer fire and volunteer emergency services in this Commonwealth as hereafter authorized by statute?

The election shall be conducted in accordance with the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. Proceeds of borrowing shall be used for the purpose of establishing a program to enhance and improve the delivery of volunteer fire and volunteer emergency services in this Commonwealth as hereafter authorized by statute.

Section 32. The General Assembly finds and declares that the following provisions are intended to clarify existing law and shall not be construed to change existing law:

- (1) The amendment of section 201(nn) and (qq) of the act.
- (2) The addition of section 204(62) of the act.
- (3) The amendment of section 301 introductory paragraph of the act.
- (4) The addition of section 315.6 of the act.
- (5) The amendment of section 402 of the act.
- (6) The addition of section 402.2 of the act.
- (7) The amendment of the definitions of "corporation," "domestic entity" and "foreign entity" in section 601(a) of the act.
- (8) The addition of section 602.6 of the act.

Section 33. The following acts and parts of acts are repealed to the extent specified:

- (1) Section 2507(a) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, absolutely.

(2) Section 7 of the act of July 2, 1993 (P.L.359, No.50), known as the Keystone Recreation, Park and Conservation Fund Act, absolutely.

Section 34. This act shall apply as follows:

(1) The following provisions shall apply to taxable years beginning after December 31, 2000:

(i) The addition of section 303(a.1), (a.2) and (a.3) of the act.

(ii) The addition of section 315.6 of the act.

(iii) The amendment of section 401(3)1(1) of the act.

(2) The following provisions shall apply to taxable years beginning after September 11, 2000:

(i) The addition of section 401(3)1(q), (r) and (s) of the act.

(ii) Section 31.1 of this act.

(3) The following provisions shall apply to taxable years beginning after December 31, 2001:

(i) The amendment of section 304 of the act.

(ii) The amendment of section 401(1) and (3)2(a)(3) of the act.

(iii) The amendment of section 602(h) of the act.

(iv) The amendment of section 606 of the act.

(v) The amendment of section 607 of the act.

(4) The following provisions shall apply to transfers made after December 31, 2001:

(i) The amendment of section 1106-C of the act.

(ii) Section 33(2) of this act.

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

(i) The amendment or addition of the introductory paragraph and the definition of "Federal estate tax" in section 2102 of the act.

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

(iii) The amendment of section 2117(a) and (b) of the act.

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

(6) The following provisions shall apply to mobile telecommunications services billed by a home service provider after August 1, 2002:

(i) The amendment or addition of section 201(b)(3.4), (k), (o), (rr) and (aaa) of the act.

(ii) The addition of section 202(g) of the act.

(iii) The addition of section 203-A of the act.

(7) The following provisions shall apply to taxable years beginning after December 31, 2002:

(i) The amendment or addition of sections 1111-A and 3003.2 of the act.

Section 35. This act shall take effect as follows:

(1) The following provisions shall take effect July 15, 2002:

(i) The amendment of sections 1206, 1206.1 and 1216 of the act.

(2) The following provisions shall take effect in 60 days:

(i) The amendment of section 208 of the act.

(ii) The amendment of section 240 of the act.

(iii) The amendment of section 321.1 of the act.

(3) The following provisions shall take effect January 1, 2003:

(i) The amendment or addition of sections 1111-A and 3003.2 of the act.

(4) The remainder of this act shall take effect July 1, 2002, or immediately, whichever is later.

APPROVED--The 29th day of June, A. D. 2002.

MARK S. SCHWEIKER