

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1557 Session of  
2005

INTRODUCED BY LEVDANSKY, DeWEESE, VEON, BELARDI, CALTAGIRONE,  
CURRY, DERMODY, FABRIZIO, FRANKEL, FREEMAN, GERBER, GERGELY,  
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STETLER, STURLA, TANGRETTI, TIGUE, WALKO, WHEATLEY, YUDICHAK  
AND JAMES, MAY 10, 2005

REFERRED TO COMMITTEE ON FINANCE, MAY 10, 2005

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," further providing, in sales and use tax, for  
11 assessment and for reassessment; deleting provisions relating  
12 to review by Board of Finance and Revenue; further providing  
13 for refund of sales tax attributed to bad debt; deleting  
14 provisions relating to refund or credit for overpayment and  
15 to restriction on refunds; further providing, in sales and  
16 use tax, for refunds, for refund petition and for extended  
17 time for filing special petition for refund; further  
18 providing, in personal income tax, for definitions and for  
19 classes of income; providing for withholding tax on early  
20 distributions; further providing, in personal income tax, for  
21 assessment, for jeopardy assessments, for procedure for  
22 reassessment, for restrictions on refunds and for limitations  
23 on refund or credit; further providing, in corporate net  
24 income tax, for definitions, for imposition, for reports and  
25 payment, for consolidated reports and for changes by Federal  
26 Government; providing, in corporate net income tax, for  
27 assessments, for jeopardy assessments, for limitations on  
28 assessments and for extension of limitation period; further  
29 providing for enforcement relating to corporate net income  
30 tax; providing, in corporate net income tax, for collection

1 and for actions to collect and defenses; further providing,  
2 in gross receipts tax, for imposition; further providing, in  
3 realty transfer tax, for assessment, for lien and for  
4 refunds; further providing for mutual thrift institutions tax  
5 assessment; further providing, in malt beverage tax, for  
6 assessment and for refund of tax; further providing for  
7 inheritance tax refund; providing for petition procedure and  
8 administration; establishing the Tax Review Tribunal and  
9 providing for its powers and duties; providing for tax  
10 clearance for renewals of licenses, permits and  
11 registrations; deleting provisions relating to petitions for  
12 refunds; further providing for estimated tax and for  
13 underpayment of estimated tax, for refund petitions and for  
14 timely filing; providing for assessments by the Department of  
15 Revenue; and making related repeals.

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

18 Section 1. Sections 230 and 232 of the act of March 4, 1971  
19 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended  
20 to read:

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

27 Section 232. Reassessment.--Any taxpayer against whom an  
28 assessment is made may petition the department for a  
29 reassessment pursuant to Article XXVII. [Notice of an intention  
30 to file such a petition shall be given to the department within  
31 thirty days of the date the notice of assessment was mailed to  
32 the taxpayer, except that the department for due cause may  
33 accept such notice within ninety days of the date the notice of  
34 assessment was mailed. The department by registered mail shall  
35 supply the taxpayer with a statement setting forth in reasonable  
36 detail the basis of the assessment within thirty days after  
37 receipt of the taxpayer's notice of intention to file a petition

1 for reassessment. A petition for reassessment shall thereafter  
2 be filed within thirty days after such basis of assessment has  
3 been mailed to the taxpayer. Such petition shall set forth in  
4 reasonable detail the grounds upon which the taxpayer claims  
5 that the assessment is erroneous or unlawful, in whole or in  
6 part, and shall be accompanied by an affidavit or affirmation  
7 that the facts contained therein are true and correct and that  
8 the petition is not interposed for delay. An extension of time  
9 for filing the petition may be allowed for cause but in no case  
10 shall such extension exceed one hundred twenty days. The  
11 department shall hold such hearings as may be necessary for the  
12 purpose, at such times and places as it may determine, and each  
13 taxpayer who has duly filed such petition for reassessment shall  
14 be notified by the department of the time when, and the place  
15 where, such hearing in his case will be held.

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

22 Section 2. Section 234 of the act is repealed.

23 Section 3. Section 247.1(a) of the act, amended June 22,  
24 2001 (P.L.353, No.23), is amended to read:

25 Section 247.1. Refund of Sales Tax Attributed to Bad Debt.--

26 (a) A vendor may file a petition for refund of sales tax paid  
27 to the department that is attributed to a bad debt if all of the  
28 following apply:

29 (1) The purchaser fails to pay the vendor the total purchase  
30 price.

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

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

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

\* \* \*

Section 4. Sections 250 and 251 of the act are repealed.

Section 5. Section 252 of the act, amended April 23, 1998 (P.L.239, No.45), is amended to read:

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

Section 6. Section 253 of the act, amended May 7, 1997  
(P.L.85, No.7), is amended to read:

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

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

[(c) It shall be the duty of the department, within six  
months after receiving a petition for refund, to dispose of the  
issue raised by such petition, and mail notice of the

1 department's decision to the petitioner: Provided, however, That  
2 the taxpayer and the department may, by stipulation, extend such  
3 disposal time by not more than six additional months.

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

21 Section 7. Section 254 of the act is repealed.

22 Section 8. Section 256 of the act is amended to read:

23 Section 256. Extended Time for Filing Special Petition for  
24 Refund.--Any party to a transaction who has paid tax by reason  
25 of a transaction with respect to which the department is  
26 assessing tax against another person may, within six months  
27 after the filing by the department of the assessment against  
28 such other person, file a special petition for refund,  
29 notwithstanding his failure to [file a regular petition within  
30 three years of the payment.] timely file a petition pursuant to

1 section 2703 of Article XXVII. The provisions of [sections 253,  
2 254 and 255] Article XXVII shall be applicable to such special  
3 petition for refund, except that the department need not act on  
4 such petition until there is a final determination as to the  
5 propriety of the assessment filed against the other party to the  
6 transaction. Where a petition is filed under this provision in  
7 order to take advantage of the extended period of limitations,  
8 overpayments by the petitioner shall be refunded but only to the  
9 extent of the actual tax (without consideration of interest and  
10 penalties) paid by the other party to the transaction. The  
11 purpose of this section is to avoid duplicate payment of tax  
12 where a determination is made by the department that one party  
13 to a transaction is subject to tax, and another party to the  
14 transaction has previously paid tax with respect to such  
15 transaction and, as such, this section shall be construed as  
16 extending right beyond that provided for by section [253] 2703,  
17 and not to limit such other section.

18 Section 9. Section 301(a), (d) and (q) of the act, amended  
19 December 23, 1983 (P.L.370, No.90), April 23, 1998 (P.L.239,  
20 No.45) and June 29, 2002 (P.L.559, No.89), are amended and the  
21 section is amended by adding clauses to read:

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

30 (a) "Accepted accounting principles and practices" means

1 [those]:

2 (i) The requirements of sections 451 and 457 of the Internal  
3 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 451 and  
4 457), as amended to January 1, 2005; (ii) those accounting  
5 principles, systems or practices, including the installment  
6 sales method of reporting, which are acceptable by standards of  
7 the accounting profession and which are not inconsistent with  
8 the regulations of the department setting forth such principles  
9 and practices or the requirements described in subclause (i).

10 \* \* \*

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

16 The term "compensation" shall not mean or include: (i)  
17 periodic payments for sickness and disability other than regular  
18 wages received during a period of sickness or disability; or  
19 (ii) disability, retirement or other payments arising under  
20 workmen's compensation acts, occupational disease acts and  
21 similar legislation by any government; or (iii) payments  
22 commonly recognized as [old age or retirement benefits paid to  
23 persons retired from service after reaching a specific age or  
24 after a stated period of employment] Social Security or Tier 1  
25 railroad retirement benefits or government or church pension  
26 plan payments; or (iv) payments commonly known as public  
27 assistance, or unemployment compensation payments by any  
28 governmental agency; or (v) payments to reimburse actual  
29 expenses; or (vi) payments made by employers or labor unions,  
30 including payments made pursuant to a cafeteria plan qualifying



1 under section 125 of the Internal Revenue Code of 1986 (Public  
2 Law 99-514, 26 U.S.C. § 125), for employee benefit programs  
3 covering hospitalization, sickness, disability or death,  
4 supplemental unemployment benefits or strike benefits: Provided,  
5 That the program does not discriminate in favor of highly  
6 compensated individuals as to eligibility to participate,  
7 payments or program benefits; or (vii) any compensation received  
8 by United States servicemen serving in a combat zone; or (viii)  
9 payments received by a foster parent for in-home care of foster  
10 children from an agency of the Commonwealth or a political  
11 subdivision thereof or an organization exempt from Federal tax  
12 under section 501(c)(3) of the Internal Revenue Code of 1954  
13 which is licensed by the Commonwealth or a political subdivision  
14 thereof as a placement agency; or (ix) payments made by  
15 employers or labor unions for employee benefit programs covering  
16 social security or [retirement] railroad retirement benefits; or  
17 (x) personal use of an employer's owned or leased property or of  
18 employer-provided services[.]; or (xi) payments received under  
19 an eligible retirement plan or funded eligible excess benefit  
20 plan by an employee after separation from covered service after  
21 attainment of retirement age or service; or (xii) payments  
22 received by an employee under an eligible supplemental executive  
23 retirement plan or unfunded eligible excess benefit plan after  
24 separation from covered service after attainment of retirement  
25 age or service as part of a series of substantially equal  
26 periodic payments, not less frequently than annually, made for:  
27 (A) the life or life expectancy of the recipient or the joint  
28 lives or joint life expectancies of the recipient and the  
29 designated beneficiary of the recipient; or (B) a period of not  
30 less than ten years; or (xiii) any distribution under an employee

1 welfare or pension benefit plan that is made to a plan  
2 beneficiary or to the estate of the employee by reason of the  
3 death of the employee; or (xiv) payments made under eligible  
4 retirement plans, eligible excess benefit plans or eligible  
5 supplemental executive retirement plans that are contingent upon  
6 the employee's being unable to engage in any substantial gainful  
7 activity by reason of any medically determinable physical or  
8 mental impairment that can be expected to result in death or to  
9 last for a continuous period of not less than twelve months; or  
10 (xv) retired or retainer pay of a member or former member of a  
11 uniform service computed under 10 U.S.C. Ch. 71.

12 \* \* \*

13 (h.1) "Eligible excess benefit plan" means any nonelective  
14 plan, program or arrangement that meets the requirements of  
15 paragraphs (2), (3) and (4) of subsection (a) of section 409A of  
16 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
17 § 409A), as amended to January 1, 2005, is operated in  
18 accordance with such requirements and is maintained solely for  
19 the purpose of providing retirement benefits for employees in  
20 excess of the limitations imposed by one or more of sections  
21 401(a)(17), (k) or (m), 402(g), 403(b), 408(k) or 415 of the  
22 Internal Revenue Code of 1986, as amended, or any other  
23 limitation on contributions or benefits in such code on plans to  
24 which any of such sections apply.

25 (h.2) "Eligible retirement plan" means any qualified  
26 retirement plan as defined in section 4974(c) of the Internal  
27 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 4974(c)),  
28 as amended to January 1, 2005, simplified employee pension plan  
29 as defined in section 408(k) of the Internal Revenue Code of  
30 1986, simple retirement account as defined in section 408(p) of

1 the Internal Revenue Code of 1986, Roth IRA as defined in  
2 section 408A of the Internal Revenue Code of 1986, or eligible  
3 deferred compensation plan as defined in section 457(b) of the  
4 Internal Revenue Code of 1986 that is in compliance, by design  
5 and in operation, with Federal requirements.

6 (h.3) "Eligible supplemental executive retirement plan"  
7 means any nonelective nonqualified deferred compensation plan  
8 that meets the requirements of section 409A(a)(2), (3) and (4)  
9 of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
10 U.S.C. § 409A(a)(2), (3) and (4)), as amended to January 1,  
11 2005, is operated in accordance with such requirements, and is  
12 maintained solely to provide supplemental retirement benefits.

13 \* \* \*

14 (q) (1) "Received" for the purpose of computation of income  
15 subject to tax under this article means "received, earned or  
16 acquired" [and];

17 (2) the phrase "received, earned or acquired" shall be  
18 construed according to the method of accounting required by the  
19 department under this article for computing and reporting income  
20 subject to the tax[.];

21 (3) with respect to eligible retirement plans, the phrase  
22 shall be construed, as applicable, according to the provisions  
23 of sections 72(a), (b), (c) and (d), 83, 402, 403, 404, 404A,  
24 406, 407, 408, 408A, 451 and 457 of the Internal Revenue Code of  
25 1986 (Public Law 99-514, U.S.C. §§ 72(a), (b), (c) and (d), 83,  
26 402, 403, 404, 404A, 406, 407, 408, 408A, 451 and 457), as  
27 amended to January 1, 2005, except that, for purposes of  
28 computing tax under this article:

29 (i) Amounts lawfully deducted and withheld from the  
30 compensation of employees shall be considered to have been

received by the employee as compensation at the time the deduction is made.

(ii) Contributions to an employees' trust, pooled fund, custodial account or contract or annuity made by an employer pursuant to a cash or deferred arrangement or salary reduction agreement shall be deemed to have been received by the employee as compensation at the time the contribution is made, regardless of when the election is made or a payment is received.

(iii) Any compensation deferred at a plan participant's election shall be deemed to have been received as compensation at the time the compensated service is performed, regardless of when the election is made or a payment is received.

(iv) Any contribution to a plan by, on behalf of or attributable to a self-employed person shall be deemed to have been received at the time the contribution is made.

(v) Employer contributions to a Roth IRA custodial account or annuity shall be deemed received, earned or acquired only when distributed or the plan fails to meet the requirements of section 408A of the Internal Revenue Code of 1986 or is not operated in accordance with such requirements.

(vi) No deduction or exclusion shall be allowed for employee contributions to an employees' trust or pooled fund or custodial account or contract or annuity;

(4) with respect to eligible excess benefit or supplemental executive retirement plans, the phrase shall be construed according to the provisions of sections 72(a), (b), (c) and (d), 83, 409A and 671 of the Internal Revenue Code of 1986, as amended to January 1, 2005, except that:

(i) Any compensation contributed in cash or in other assets at a plan participant's election shall be deemed to have been

1 received as remuneration at the time the compensated service is  
2 performed, regardless of when the election or payment is made  
3 and no deduction or exclusion shall be allowed for employe  
4 contributions to an employees' trust or pooled fund or custodial  
5 account or contract or annuity.

6 (ii) Notwithstanding subsection (d)(xi) and (xii), any  
7 unfunded eligible excess benefit plan or eligible supplemental  
8 executive retirement plan distribution of remuneration deferred  
9 at a plan participant's election which was not includable in the  
10 income of the participant shall be taxable as compensation when  
11 distributed; and

12 (5) with respect to nonqualified deferred compensation plans  
13 other than eligible excess benefit plans, the phrase shall be  
14 construed according to the provisions of sections 72(a), (b),  
15 (c) and (d), 83, 409A and 671 of the Internal Revenue Code of  
16 1986, as amended to January 1, 2005, except that no deduction or  
17 exclusion shall be allowed for employe contributions to an  
18 employees' trust or pooled fund or custodial account or contract  
19 or annuity.

20 \* \* \*

21 (s.3) "Retirement age or service" means the earliest of:

22 (1) The earliest time specified in the employees' plan at  
23 which all plan participants who are not disabled acquire the  
24 right to separate from employment by retirement without the  
25 consent of the employer and the right immediately to begin  
26 receiving retirement benefits without reduction due to early  
27 retirement.

28 (2) The earliest time specified in the employees' plan at  
29 which all plan participants who are not disabled acquire the  
30 right to separate from employment by retirement without the

consent of the employer and the right immediately to begin receiving the benefit to which they would be entitled at the normal retirement time actuarially reduced due to age.

(3) Where a plan does not specify retirement age or service, the date on which the employe attains fifty-nine and a half years of age.

Section 10. Section 303 of the act is amended by adding subsections to read:

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

(a.4) Applicable Federal limitations on State income taxation are incorporated by reference.

(a.5) Except as provided in this article and without regard to section 409A(a)(1)(B)(i)(II) of the Internal Revenue Code of 1986 (26 U.S.C. § 409A(a)(1)(B)(i)(II)), the requirements of Subtitle A, Ch. 1 Subch. D, Pt. 1, Subpt. A of the Internal Revenue Code of 1986 (26 U.S.C. § 401 et seq.), as amended to January 1, 2005, and sections 72(a), (b), (c) and (d), 83 and 457 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 72(a), (b), (c) and (d), 83 and 457), as amended to January 1, 2005, shall be applicable.

(a.6) Any benefit provided under the Railroad Retirement Act of 1974 (Public Law 93-445, 88 Stat. 1305), as amended, other than a Tier 1 railroad retirement benefit, and amounts described in section 1402(a)(10) of the Internal Revenue Code of 1986 (26 U.S.C. § 1402(a)(10), as amended to January 1, 2005, shall be treated for purposes of this article as a benefit provided under an eligible retirement plan.

\* \* \*

Section 11. Article III of the act is amended by adding a part to read:

1 PART VII-B

2 WITHHOLDING TAX ON EARLY DISTRIBUTIONS

3 Section 324.8. Withholding Tax on Early Distributions.--(a)

4 Except as provided in this section, all provisions of this  
5 article that are applicable to an employer shall be applicable  
6 to any payor of any distribution or payment from or under an  
7 employe benefit plan, individual retirement plan as defined in  
8 section 7701(a)(37) of the Internal Revenue Code of 1986 (Public  
9 Law 99-514, 26 U.S.C. § 7701(a)(37)) or commercial annuity. Any  
10 such payor shall withhold from such distribution or payment the  
11 amount that would be required to be withheld therefrom if it  
12 were a payment of wages by an employer to an employe.

13 (b) Subsection (a) shall not apply to:

14 (1) Any nonperiodic distribution that is an eligible  
15 rollover distribution as defined by section 402(f)(2)(A) of the  
16 Internal Revenue Code of 1986, as amended to January 1, 2005, if  
17 the distributee elects under section 401(a)(31)(A) of the  
18 Internal Revenue Code of 1986 to have such distribution paid  
19 directly to an eligible retirement plan.

20 (2) Any amount that is wages for Federal income tax purposes  
21 without regard to this section.

22 (3) Any portion of a distribution or payment which it is  
23 reasonable to believe is excludable from tax under this article.

24 (4) Any amount paid on employer securities that is paid to a  
25 plan and reinvested in employer securities and allowed as a  
26 deduction under section 404(k) of the Internal Revenue Code of  
27 1986, as amended to January 1, 2005.

28 (c) The plan administrator shall withhold and be liable for  
29 payment of the tax required to be withheld under this section  
30 unless the plan administrator directs the payor to withhold such

1 tax and provides the payor with such information as the  
2 department may require by regulations.

3 Section 12. Sections 338, 339 and 340 of the act, added  
4 August 31, 1971 (P.L.362, No.93), are amended to read:

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

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

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

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

25 Section 339. Jeopardy Assessments.--(a) Jeopardy  
26 Assessments, Filing and Notice. If the department believes that  
27 the assessment or the collection of a deficiency will be  
28 jeopardized in whole or in part by delay, it may mail or issue  
29 notice of its finding to the taxpayer, together with a demand  
30 for immediate payment of the tax or the deficiency declared to



1 be in jeopardy including interest and penalties and additions  
2 thereto, if any.

3 (b) Closing of Taxable Year. If the department believes that  
4 a taxpayer designs quickly to depart from the State or to remove  
5 his property therefrom or to conceal himself or his property  
6 therein, or to do any other act tending to prejudice or to  
7 render wholly or partly ineffectual proceedings to collect the  
8 tax for the taxable year then last past or the taxable year then  
9 current unless such proceedings be brought without delay, the  
10 department shall declare the taxable period for such taxpayer  
11 immediately terminated and shall cause notice of such finding  
12 and declaration to be given the taxpayer, together with a demand  
13 for immediate payment of the tax for the taxable period so  
14 declared terminated and of the tax for the preceding taxable  
15 year or so much of such tax as is unpaid, whether or not the  
16 time otherwise allowed by law for filing return and paying the  
17 tax has expired; and such taxes shall thereupon become  
18 immediately due and payable.

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

30 (d) Jeopardy Assessment, When Final. If a petition for

1 reassessment, accompanied by bond or other security is not filed  
2 within the ten-day period, the assessment becomes final.

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

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

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

22 Section 340. Procedure for Reassessment.--[Promptly after  
23 the date of an assessment by the department, the department  
24 shall send by mail a copy thereof to the person against whom it  
25 was made. Within ninety days after the date upon which the copy  
26 of any such assessment was mailed, such person may file with the  
27 department a petition for reassessment of such tax. Every  
28 petition for reassessment shall state specifically the reasons  
29 which the petitioner believes entitled him to such reassessment,  
30 and it shall be supported by affidavit that it is not made for

1 the purpose of delay and that the facts set forth therein are  
2 true. It shall be the duty of the department, within six months  
3 after receiving a petition for reassessment, to dispose of such  
4 petition for reassessment. Notice of the action taken upon any  
5 petition for reassessment shall be given to the petitioner  
6 promptly thereafter.] Any taxpayer against whom an assessment is  
7 made may petition the department for a reassessment pursuant to  
8 Article XXVII.

9 Section 13. Section 341 of the act is repealed.

10 Section 14. Section 347 of the act, amended July 1, 1985  
11 (P.L.78, No.29), is amended to read:

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

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

18 (2) Upon reassessment [or upon];

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

21 Section 15. Section 350 of the act, amended May 7, 1997  
22 (P.L.85, No.7), is amended to read:

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

26 Section 16. Section 401(3)1(a) and (b), 2(a) and 4(c) and  
27 (5) of the act, amended or added December 23, 1983 (P.L.370,  
28 No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991 (P.L.97,  
29 No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001 (P.L.353,  
30 No.23) and June 29, 2002 (P.L.559, No.89) are amended, clause

1 (3)2 is amended by adding a phrase and the section is amended by  
2 adding clauses to read:

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

7 \* \* \*

8 (3) "Taxable income." 1. (a) In case the entire business  
9 of the corporation is transacted within this Commonwealth, for  
10 any taxable year which begins on or after January 1, 1971,  
11 taxable income for the calendar year or fiscal year as returned  
12 to and ascertained by the Federal Government, or in the case of  
13 a corporation participating in the filing of consolidated  
14 returns to the Federal Government or that is not required to  
15 file a return with the Federal Government, the taxable income  
16 which would have been returned to and ascertained by the Federal  
17 Government if separate returns had been made to the Federal  
18 Government for the current and prior taxable years, subject,  
19 however, to any correction thereof, for fraud, evasion, or error  
20 as finally ascertained by the Federal Government.

21 (b) Additional deductions shall be allowed from taxable  
22 income on account of any dividends received from any other  
23 corporation but only to the extent that such dividends are  
24 included in taxable income as returned to and ascertained by the  
25 Federal Government. For tax years beginning on or after January  
26 1, 1991, additional deductions shall only be allowed for amounts  
27 included, under section 78 of the Internal Revenue Code of 1986  
28 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned  
29 to and ascertained by the Federal Government and for the amount  
30 of any dividends received from a foreign corporation included in

1 taxable income to the extent such dividends would be deductible  
2 in arriving at Federal taxable income if received from a  
3 domestic corporation. For taxable years beginning on or after  
4 January 1, 2007, if not otherwise allowed as a deduction, an  
5 additional deduction is allowed for all dividends paid by one to  
6 another of the included corporations of a unitary business to  
7 the extent those dividends are included in business income of a  
8 corporation that is required to determine its business income  
9 pursuant to paragraph (1) of phrase (e) of subclause (2).

10 \* \* \*

11 2. In case the entire business of any corporation, other  
12 than a corporation engaged in doing business as a regulated  
13 investment company as defined by the Internal Revenue Code of  
14 1986, is not transacted within this Commonwealth, the tax  
15 imposed by this article shall be based upon such portion of the  
16 taxable income of such corporation for the fiscal or calendar  
17 year, as defined in subclause 1 hereof, and may be determined as  
18 follows:

19 (a) Division of Income.

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

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

30 (B) "Commercial domicile" means the principal place from

1 which the trade or business of the taxpayer is directed or  
2 managed.

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

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

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

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

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

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

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

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

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

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

20       (C) The extent of utilization of tangible personal property  
21 in a state is determined by multiplying the rents and royalties  
22 by a fraction, the numerator of which is the number of days of  
23 physical location of the property in the state during the rental  
24 or royalty period in the taxable year and the denominator of  
25 which is the number of days of physical location of the property  
26 everywhere during all rental or royalty periods in the taxable  
27 year. If the physical location of the property during the rental  
28 or royalty period is unknown or unascertainable by the taxpayer,  
29 tangible personal property is utilized in the state in which the  
30 property was located at the time the rental or royalty payer

1   obtained possession.

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

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

10      (C) Gains and losses from sales or other disposition of  
11   intangible personal property are allocable to this State if the  
12   taxpayer's commercial domicile is in this State.

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

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

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

29      (C) A copyright is utilized in a state to the extent that  
30   printing or other publication originates in the state. If the



basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) (A) Except as provided in [subparagraph (B)] subparagraphs (B) and (C), all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor, and the denominator of which is five.

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

(C) For taxable years that begin on or after January 1, 2007, all business income shall be apportioned to this State by a fraction, which is the sales factor. This includes any railroad, truck, bus, airline, pipeline, natural gas or water transportation company that is required to determine its business income pursuant to paragraph (1) of phrase (e) of this subclause.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sale,

1 bailment lease, chattel mortgage or other contract providing for  
2 the retention of a lien or title as security for the sales price  
3 of the property.

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

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

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

19 (14) Compensation is paid in this State if:

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

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

25 (C) Some of the service is performed in this State and the  
26 base of operations or if there is no base of operations, the  
27 place from which the service is directed or controlled is in  
28 this State, or the base of operations or the place from which  
29 the service is directed or controlled is not in any state in  
30 which some part of the service is performed, but the

1 individual's residence is in this State.

2 (15) The sales factor is a fraction, the numerator of which  
3 is the total sales of the taxpayer in this State during the tax  
4 period, and the denominator of which is the total sales of the  
5 taxpayer everywhere during the tax period.

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

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

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

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

19 (17.1) Sales of services are in this State if sales are  
20 derived from customers within this State. If part of the sales  
21 with respect to a specific contract or other agreement to  
22 perform services is derived from customers from within this  
23 State, sales are in this State in proportion to the sales  
24 derived from customers within this State to total sales with  
25 respect to that contract or agreement.

26 (17.2) In order to determine sales in this State of any  
27 railroad, truck, bus, airline, pipeline, natural gas or water  
28 transportation company that is required to determine its  
29 business income pursuant to paragraph (1) of phrase (e) of this  
30 subclause such company must convert the relevant fraction set

forth in phrase (b), (c) or (d) of this subclause to gross receipts. Sales in this State are the result of multiplying total gross receipts from relevant transportation activities by the decimal equivalent of the relevant fraction set forth in phrase (b), (c) or (d) of this subclause.

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

(A) Separate accounting;

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

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

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

\* \* \*

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

(1) Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2007, business income of a corporation that is a member of a unitary business that consists of two or more corporations, at least one of which does not transact its entire business in this State, is determined by combining the business income of either all corporations, other than as set forth below, that are water's-

edge basis members or all corporations, other than as set forth below, that are worldwide members of the unitary business. All transactions among included corporations of the unitary business are eliminated in determining the business income of a corporation that is a member of that unitary business. Business income of the following corporations is not included in the determination of combined business income:

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

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

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

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

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

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

(2) Notwithstanding any contrary provisions of this article, all corporations that are required to compute business income under paragraph (1) are entitled to apportion such business

income when one corporation of the same unitary business is entitled to apportion such business income. Notwithstanding any contrary provisions of this article, for taxable years that begin on or after January 1, 2007, the denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1) shall be computed on a combined basis for all included corporations of the unitary business. All transactions among included corporations of the unitary business are eliminated in computing the numerator and denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1). The apportionment fraction of the following corporations is not included in the determination of the combined apportionment fraction:

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

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

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

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

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

1 this State;

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

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

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

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

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

30 (7) The Secretary of Revenue has the authority and

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

\* \* \*

4. \* \* \*

(c) (1) The net loss deduction shall be the lesser of two million dollars (\$2,000,000) or the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2[.] for taxable years that begin on or prior to December 31, 2007. The net loss deduction for any taxable year that begins during calendar year 2007 is further limited by the provisions of paragraph (4). Except as set forth in paragraph (4), there is no maximum on the amount of the net loss deduction allowed for taxable years beginning on or after January 1, 2008. 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



1		starting with the
2		1995 taxable year
3	1989	1 taxable year plus
4		2 taxable years
5		starting with the
6		1995 taxable year
7	1990-1993	3 taxable years
8		starting with the
9		1995 taxable year
10	1994	1 taxable year
11	1995	
12	-1997	10 taxable years
13	1998 and thereafter	20 taxable years

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

18 (3) The entire net loss for a taxable year that begins on or  
19 after January 1, 2007, is available to be carried over to a  
20 taxable year that begins on or after January 1, 2008, pursuant  
21 to the schedule set forth in paragraph (2) and shall be carried  
22 over to the earliest taxable year to which it may be carried  
23 pursuant to the schedule set forth in paragraph (2).

24 (4) The amount of unused net loss from all taxable years  
25 that begin prior to January 1, 2007, that may be carried over to  
26 any taxable year that begins on or after January 1, 2007, is  
27 limited to two million dollars (\$2,000,000) per taxable year and  
28 may only be used by the corporation that realized the net loss.  
29 If a corporation is required to determine its business income  
30 pursuant to paragraph (1) of phrase (e) of subclause 2, it may

only use such loss in a year to the extent that it has taxable income before use of such loss determined as if it were a separate company.

(5) Any net loss realized for a taxable year that begins on or after January 1, 2007, by one corporation of a unitary business may be used by other corporations of the same unitary business, provided that the corporation that realized the net loss must first use the portion of such net loss to reduce its taxable income to zero. Other corporations of the same unitary business that have insufficient net losses of their own to reduce their tax liabilities to zero may then use the remainder of such net loss in proportion to their remaining taxable incomes before the application of such loss.

(6) Any net loss realized for a taxable year that begins on or after January 1, 2007, unused by a corporation which subsequently becomes a member of another unitary business may only be used by that corporation.

\* \* \*

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

1 subclause or subclause 2.

2 2. All corporations of a unitary business shall have a  
3 common taxable year for purposes of computing tax due under this  
4 article. The taxable year for such purposes is the common  
5 taxable year adopted, in a manner prescribed by the department,  
6 by all corporations of a unitary business. The common taxable  
7 year must be used by all corporations of that unitary business  
8 in the year of adoption and all future years unless otherwise  
9 permitted by the department.

10 \* \* \*

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

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

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

29 1. The entire business income and apportionment factor of  
30 any member incorporated in the United States or formed under the

laws of any state of the United States, the District of Columbia, any territory or possession of the United States or the Commonwealth of Puerto Rico.

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

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

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

5. Any member that is a "controlled foreign corporation" as defined in section 957 of the Internal Revenue Code of 1986 (26 U.S.C. § 957), to the extent the business income of that member is income defined in section 952 of the Internal Revenue Code of 1986 (26 U.S.C. § 952), Subpart F income, not excluding lower-tier subsidiaries' distributions of such income which were previously taxed, determined without regard to Federal treaties, and the apportionment factor related to that income; any item of

income received by a controlled foreign corporation and the apportionment factor related to such income shall be excluded if the corporation establishes to the satisfaction of the Secretary of Revenue that such income was subject to an effective rate of income tax imposed by a foreign country greater than ninety per cent of the maximum rate of tax specified in section 11 of the Internal Revenue Code of 1986 (26 U.S.C. § 11).

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

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

(11) "Separate company." A corporation that is not a member of a unitary business that consists of two or more corporations.

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

Section 17. Section 402(b) of the act, amended June 29, 2002 (P.L.559, No.89), is amended to read:

Section 402. Imposition of Tax.--\* \* \*

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

Taxable Year	Tax Rate
January 1, 1995, [and each taxable year thereafter] <u>through taxable years beginning December 31, 2006</u>	9.99%
<u>January 1, 2007, and each taxable year thereafter</u>	<u>7.90%</u>

\* \* \*

Section 18. Section 403 of the act, amended September 9, 1971 (P.L.437, No.105), June 23, 1982 (P.L.610, No.172), July 1, 1985 (P.L.78, No.29) and August 4, 1991 (P.L.97, No.22) and repealed in part December 19, 1990 (P.L.834, No.198) is amended to read:

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

1 shall set forth:

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

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

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

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

29 (2) The oath or affirmation of the designated member's  
30 president, vice president or other principal officer, and of its

treasurer or assistant treasurer shall constitute the oath or affirmation of each corporation that is a member of that unitary business.

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

(i) All corporations included in the unitary business.

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

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

(a.2) (1) Activities that evidence a significant flow of value among commonly controlled corporations, include, but are not limited to, the following:

(i) Assisting in the acquisition of equipment.

(ii) Assisting with filling personnel needs.

(iii) Lending funds or guaranteeing loans.

(iv) Interplay in the area of corporate expansion.

(v) Providing technical assistance.

(vi) Supervising.

(vii) Providing general operational guidance.

(viii) Providing overall operational strategic advice.

(ix) Common use of trade names and patents.

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

(a.3) (1) With respect to a commonly controlled group of



corporations, the presence of any of these factors creates a presumption of a unitary business:

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

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

(iii) Strong centralized management of corporations.

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

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

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

(a.4) As far as applicable to a specific unitary business, unless there is a revision of applicable State law or unless a corporation is not included under the provisions of this article, there is a rebuttable presumption for all tax years that begin in years 2007 and 2008 that a unitary business of two or more corporations includes at least all corporations that are part of a unitary business under the law of any state of the United States for the same tax year.

(a.5) Unless an election is made to use a worldwide basis of accounting, a corporation that is a member of a unitary business

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

12 (b) [For the purpose of ascertaining the amount of tax  
13 payable under this article for the taxable year 1971, and each  
14 taxable year thereafter, it shall be the duty of every  
15 corporation liable to pay tax under this article, on or before  
16 April 30, 1971, and on or before the end of the fourth month  
17 after the close of its previous fiscal year for fiscal year  
18 taxpayers, and each year thereafter, to transmit in like form  
19 and manner an additional tentative report and make payment  
20 pursuant to the provisions of section 3003: Provided, That in  
21 making such report and payment for the calendar year 1971 and  
22 each year thereafter and for fiscal years commencing during the  
23 calendar year 1971, and each year thereafter the tax base from  
24 the immediate prior year, upon which the tentative tax  
25 computation is to be made under said section 3003, shall be  
26 computed as if the tax base for such immediate prior year had  
27 been determined under the applicable provisions of the act of  
28 March 4, 1971 (Act No.2). For taxable years commencing with  
29 calendar year 1986 and for each taxable year through taxable  
30 year 1991, corporations shall not report and pay tentative tax

1 on account of the corporate net income tax, but shall, on or  
2 before April 15 for calendar year taxpayers and on or before the  
3 fifteenth day of the fourth month of the fiscal year for fiscal  
4 year taxpayers, report and pay estimated corporate net income  
5 tax pursuant to section 3003.2 of this act: Provided, however,  
6 That tentative tax on account of any other tax which is imposed  
7 as the result of the adoption by reference of this part or  
8 section shall continue to be imposed. For taxable years  
9 commencing on or after January 1, 1992, corporations shall  
10 report and pay estimated tax pursuant to section 3003.2 on or  
11 before March 15 for calendar year taxpayers and on or before the  
12 fifteenth day of the third month for fiscal year taxpayers.] It  
13 shall be the duty of each corporation liable to pay tax under  
14 this article to pay estimated tax pursuant to section 3003.2 and  
15 to make final payment of the tax due for the taxable year with  
16 the annual report required by this section.

17 (c) The amount of all taxes, imposed under the provisions of  
18 this article, not paid on or before the times as above provided,  
19 shall bear interest as provided in section 806 of the act of  
20 April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code,"  
21 from the date they are due and payable until paid, except that  
22 if the taxable income has been, or is increased by the  
23 Commissioner of Internal Revenue, or by any other agency or  
24 court of the United States, interest shall be computed on the  
25 additional tax due from thirty days after the corporation  
26 receives notice of the change of income until paid: Provided,  
27 however, That any corporation may pay the full amount of such  
28 tax, or any part thereof, together with interest due to the date  
29 of payment, without prejudice to its right to present and  
30 prosecute [a] an administrative petition [for resettlement, a

1 petition for review,] or an appeal to court. If it be thereafter  
2 determined that such taxes were overpaid, the department shall  
3 enter a credit to the account of such corporation, which may be  
4 used by it in the manner prescribed by law.

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

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

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

30 Section 19. Section 404 of the act is amended to read:

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

7       (b) This section applies to taxable years beginning prior to  
8 January 1, 2007.

9       Section 20. Section 406 of the act, amended September 9,  
10 1971 (P.L.437, No.105), is amended to read:

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

26       (b) If, as a result of such final change or correction,  
27 there should be any change made in the amount of the taxable  
28 income of any corporation upon which tax is imposed by this  
29 article, the department shall have the power, and its duty shall  
30 be to [resettle such taxes. Whenever a resettlement shall have

1 been made hereunder, the department shall resettle the account  
2 according to law, and shall credit or charge, as the case may  
3 be, the amount resulting from such resettlement upon the current  
4 accounts of the corporation with which it is made. The  
5 resettlement shall be subject to audit and approval by the  
6 Department of the Auditor General, as in the case of original  
7 settlements, and in case of the failure of the two departments  
8 to agree, the resettlement shall be submitted to the Board of  
9 Finance and Revenue, as in the case of original settlements.]  
10 determine and assess the taxpayer's unpaid or unreported  
11 liability for tax due the Commonwealth, or to credit the  
12 taxpayer's account as appropriate.

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

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

30 (e) The provisions of this section shall apply to every

1 corporation which was doing business in Pennsylvania in the year  
2 for which the Federal income has been changed, irrespective of  
3 whether or not such corporation has thereafter merged,  
4 consolidated, withdrawn or dissolved. Any clearance certificate  
5 issued by the department shall be conditioned upon the  
6 requirement that in the event of a change in Federal income for  
7 any year for which taxes have been paid to the Commonwealth, the  
8 corporation or its successor or its officers or its directors  
9 shall file with the department a report of change and pay any  
10 additional State tax resulting therefrom.

11 Section 21. The heading of Part IV of Article IV of the act  
12 is amended to read:

13 PART IV

14 [SETTLEMENT AND RESETTLEMENT]

15 ASSESSMENT AND COLLECTION OF TAX

16 Section 22. Section 407 of the act is amended by adding a  
17 subsection to read:

18 Section 407. Settlement and Resettlement.--\* \* \*

19 (e.1) This section applies to taxable years beginning prior  
20 to January 1, 2007.

21 \* \* \*

22 Section 23. The act is amended by adding sections to read:

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

26 (b) A notice of assessment and demand for payment shall be  
27 mailed by certified mail to the taxpayer. The notice shall set  
28 forth the basis of the assessment. The assessment shall be paid  
29 to the department upon receipt of the notice of assessment.  
30 Payment of the assessment shall be without prejudice to the

1 right of the taxpayer to file a petition for reassessment in the  
2 manner prescribed by Article XXVII.

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

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

15 (e) A taxpayer shall have no right to petition for  
16 reassessment, petition for refund or otherwise appeal a notice  
17 of estimated assessment except as provided in subsection (f).

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

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



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

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

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

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

27     (1) The collection of the whole or any amount of a jeopardy  
28 assessment may be stayed, at any time before the assessment  
29 becomes final, by filing with the department a bond or other  
30 security in such amounts as the department may deem necessary

1 not exceeding one hundred twenty per cent of the tax for which  
2 the stay is desired.

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

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

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

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

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

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

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

4     (ii) If the petition is not disposed of by the department  
5     within sixty days after receipt, the sixtieth day following the  
6     date the petition was received by the department.

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

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

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

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

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

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

29    (c) Tax may be assessed at any time if the taxpayer files a  
30    false or fraudulent report with intent to evade tax imposed by

1 the tax laws of this Commonwealth.

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

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

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

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

25 Section 24. Section 408(b) of the act, amended June 23, 1982  
26 (P.L.610, No.172), is amended to read:

27 Section 408. Enforcement; Rules and Regulations;  
28 Inquisitorial Powers of the Department.--\* \* \*

29 (b) The department, or any agent authorized in writing by  
30 it, is hereby authorized to examine the books, papers, and

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

22 \* \* \*

23 Section 25. The act is amended by adding sections to read:

24 Section 408.1. Collection of Tax.--The department shall  
25 collect the taxes imposed by this article in the manner provided  
26 by law for the collection of taxes imposed by the laws of this  
27 Commonwealth.

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

30 (1) Immediately, in the case of any amount related to tax

1 reported as due the Commonwealth by the taxpayer that is not  
2 paid by the due date for payment of the tax.

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

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

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

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

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

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

22 Section 26. Section 1101(e) of the act, amended December 11,  
23 1979 (P.L.499, No.107), is amended to read:

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

25 (e) Time to File Reports.--The time for filing annual  
26 reports may be extended, estimated [settlements] assessments may  
27 be made by the Department of Revenue if reports are not filed,  
28 and the penalties for failing to file reports and pay the taxes  
29 imposed under subsections (a) and (b) shall be as prescribed by  
30 the laws defining the powers and duties of the Department of

1 Revenue. In any case where the works of any corporation,  
2 company, copartnership, association, joint-stock association,  
3 limited partnership, person or persons are operated by another  
4 corporation, company, copartnership, association, joint-stock  
5 association, limited partnership, person or persons, the taxes  
6 imposed under subsections (a) and (b) shall be apportioned  
7 between the corporations, companies, copartnerships,  
8 associations, joint-stock associations, limited partnerships,  
9 person or persons in accordance with the terms of their  
10 respective leases or agreements, but for the payment of the said  
11 taxes the Commonwealth shall first look to the corporation,  
12 company, copartnership, association, joint-stock association,  
13 limited partnership, person or persons operating the works, and  
14 upon payment by the said company, corporation, copartnership,  
15 association, joint-stock association, limited partnership,  
16 person or persons of a tax upon the receipts, as herein  
17 provided, derived from the operation thereof, no other  
18 corporation, company, copartnership, association, joint-stock  
19 association, limited partnership, person or persons shall be  
20 held liable for any tax imposed under subsections (a) and (b)  
21 upon the proportion of said receipts received by said  
22 corporation, company, copartnership, association, joint-stock  
23 association, limited partnership, person or persons for the use  
24 of said works.

25 \* \* \*

26 Section 27. Sections 1111-C and 1112-C of the act, amended  
27 July 2, 1986 (P.L.318, No.77), are amended to read:

28 Section 1111-C. [Determination] Assessment and Notice of  
29 Tax; Review.--(a) If any person shall fail to pay any tax  
30 imposed by this article for which he is liable, the department

1 is hereby authorized and empowered to make [a determination] an  
2 assessment of additional tax and interest due by such person  
3 based upon any information within its possession or that shall  
4 come into its possession. All of such [determinations]  
5 assessments shall be made within three years after the date of  
6 the recording of the document.

7 (b) Promptly after the date of such [determination]  
8 assessment, the department shall send by certified mail a copy  
9 thereof, including the basis of the assessment, to the person  
10 against whom it was made. [Within ninety days after the date  
11 upon which the copy of any such determination was mailed, such  
12 person may file with the department a petition for  
13 redetermination of such taxes. Every petition for  
14 redetermination shall state specifically the reasons which the  
15 petitioner believes entitle him to such redetermination, and it  
16 shall be supported by affirmation that it is not made for the  
17 purpose of delay and that the facts set forth therein are true.  
18 It shall be the duty of the department within six months after  
19 the date of filing of any petition for redetermination to  
20 dispose of the petition. Notice of the action taken upon any  
21 petition for redetermination shall be given to the petitioner  
22 promptly after the date of redetermination by the department.

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

29 Section 1112-C. Lien.--(a) Any tax determined to be due by  
30 the department and remaining unpaid after demand for the same,



1 and all penalties and interest thereon, shall be a lien in favor  
2 of the Commonwealth upon the property, both real and personal,  
3 of such person but only after said lien has been entered and  
4 docketed of record by the prothonotary of the county where such  
5 property is situated.

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

22 (b) The lien imposed hereunder shall have priority from the  
23 date of its recording as aforesaid, and shall be fully paid and  
24 satisfied out of the proceeds of any judicial sale of property  
25 subject thereto before any other obligation, judgment, claim,  
26 lien or estate to which said property may subsequently become  
27 subject, except costs of the sale and of the writ upon which the  
28 sale was made, and real estate taxes and municipal claims  
29 against such property, but shall be subordinate to mortgages and  
30 other liens existing and duly recorded or entered of record

1 prior to the recording of the tax lien. In the case of a  
2 judicial sale of property subject to a lien imposed hereunder  
3 upon a lien or claim over which the lien imposed hereunder has  
4 priority, as aforesaid, such sale shall discharge the lien  
5 imposed hereunder to the extent only that the proceeds are  
6 applied to its payment, and such lien shall continue in full  
7 force and effect as to the balance remaining unpaid.

8 (c) The lien imposed hereunder shall continue for five years  
9 from the date of its entry of record, and may be renewed and  
10 continued in the manner now or hereafter provided for the  
11 renewal of judgments, or as may be provided in the act of April  
12 9, 1929 (P.L.343, No.176), known as "The Fiscal Code."

13 Section 28. Section 1113-C of the act, amended May 7, 1997  
14 (P.L.85, No.7), is amended to read:

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

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

27 Section 29. Section 1502(f) of the act, amended October 14,  
28 1988 (P.L.737, No.106), is amended to read:

29 Section 1502. Imposition; Report and Payment of Tax;  
30 Exemptions.--\* \* \*

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

6 Section 30. Section 2005 of the act, added December 22, 1989  
7 (P.L.775, No.110), is amended to read:

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

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

30 (c) Within [sixty] ninety days after the date of mailing of

1 notice by the department of the action taken on any petition for  
2 reassessment filed with it, the person against whom such  
3 assessment was made, may, by petition, request the [Board of  
4 Finance and Revenue] Tax Review Tribunal to review such action.  
5 Every petition for review filed hereunder shall state  
6 specifically the reason upon which the petitioner relies, or  
7 shall incorporate by reference the petition for reassessment in  
8 which such reasons shall have been stated. The petition shall be  
9 supported by affidavit that it is not made for the purpose of  
10 delay, and that the facts therein set forth are true. If the  
11 petitioner be a corporation, joint-stock association or limited  
12 partnership, the affidavit must be made by one of the principal  
13 officers thereof. A petition for review may be amended by the  
14 petitioner at any time prior to the hearing, as hereinafter  
15 provided. The [Board of Finance and Revenue] Tax Review Tribunal  
16 shall act finally in disposition of such petitions filed with it  
17 within six months after they have been received, and, in the  
18 event of the failure of said [board] tribunal to dispose of any  
19 such petition within six months, the action taken by the  
20 department upon the petition for reassessment shall be deemed  
21 sustained. The [Board of Finance and Revenue] Tax Review  
22 Tribunal may sustain the action taken on the petition for  
23 reassessment, or it may reassess the tax due upon such basis as  
24 it shall deem according to law and equity. Notice of the action  
25 of the [Board of Finance and Revenue] Tax Review Tribunal shall  
26 be given by mail, or otherwise, to the department and to the  
27 petitioner.

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

1 (e) Whenever any assessment of additional tax is not paid  
2 within ninety days after the date of the assessment, if no  
3 petition for reassessment has been filed, or within [sixty]  
4 ninety days from the date of reassessment, if no petition for  
5 review has been filed, or within [sixty] thirty days from the  
6 date of the decision of the [Board of Finance and Revenue] Tax  
7 Review Tribunal upon a petition for review, or the expiration of  
8 the [board's] tribunal's time for acting upon such petition, if  
9 no appeal has been made, and in all cases of judicial sales,  
10 receiverships, assignments or bankruptcies, the department may  
11 call upon the Office of Attorney General to collect such  
12 assessment. In such event, in a proceeding for the collection of  
13 such taxes, the person against whom they were assessed shall not  
14 be permitted to set up any ground of defense that might have  
15 been determined by the department, the [Board of Finance and  
16 Revenue] Tax Review Tribunal or the courts. The department may  
17 also certify to the Liquor Control Board, for such action as the  
18 board may deem proper, the fact that any person has failed to  
19 pay or duly appeal from such assessment of additional tax. The  
20 department may also provide, adopt, promulgate and enforce such  
21 rules and regulations, as may be appropriate, to prevent further  
22 shipment or transportation of malt or brewed beverages into this  
23 Commonwealth by any person against whom such unpaid assessment  
24 shall have been made.

25 Section 31. Sections 2009(f) and 2181 of the act, amended  
26 May 7, 1997 (P.L.85, No.7), are amended to read:

27 Section 2009. Refund of Tax.--\* \* \*

28 (f) In each of the above cases the department shall pay or  
29 issue to the manufacturer credits of sufficient value to cover  
30 the refund. Such credits may be used by the manufacturer for the

1 payment of any taxes due by him to the Commonwealth. The  
2 procedure for refund in any case shall be completed by the  
3 department within sixty days after the proper affidavits have  
4 been filed with the department under section [3003.1] 2703.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Section 32. The act is amended by adding articles to read:

22 ARTICLE XXVII

23 PROCEDURE AND ADMINISTRATION

24 Section 2701. Definitions.

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

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

29 Section 2702. Petition for reassessment.

30 (a) General rule.--A taxpayer may file a petition for

1 reassessment with the department within 90 days after the  
2 mailing date of the notice of assessment.

3 (b) Special rule for shares taxes.--Notwithstanding any  
4 provision of law to the contrary, section 2703(e) (relating to  
5 petition for refund) shall constitute the exclusive method by  
6 which an appeal from the assessment of the tax imposed by  
7 Article VII (relating to bank and trust company shares tax) or  
8 VIII (relating to title insurance companies shares tax) may be  
9 made.

10 (c) Application to inheritance and estate taxes.--This  
11 section shall not apply to the taxes imposed by Article XXI  
12 (relating to inheritance tax). Part XI (relating to disputed  
13 tax) of Article XXI shall provide the exclusive procedure for  
14 protesting the appraisement and assessment of taxes imposed by  
15 Article XXI.

16 Section 2703. Petition for refund.

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

26 (b) Limit on amount of refund.--

27 (1) If a petition for refund is filed by the taxpayer  
28 during the three-year period prescribed in subsection (a),  
29 the amount of the refund shall not exceed the portion of the  
30 tax paid within the period immediately preceding the filing



1 of the petition, equal to three years plus the period of any  
2 extension of time for filing the return. If the tax was  
3 required to be paid by means of a stamp, the amount of the  
4 refund shall not exceed the portion of the tax paid within  
5 the three years immediately preceding the filing of the  
6 petition.

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

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

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

23 (1) The period for filing a petition for refund provided  
24 in subsections (a) and (b)(1), shall not expire prior to six  
25 months after the expiration of the period within which an  
26 assessment may be made pursuant to the agreement or any  
27 extension thereof under the provisions of section 261, 349 or  
28 407.4.

29 (2) If a petition is filed after the execution of the  
30 agreement and within six months after the expiration of the

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

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

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

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

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

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

24 (2) Termination of litigation establishing a right to a  
25 refund. A petition for refund shall not be necessary when the  
26 litigation has been with the Commonwealth over liability for  
27 the tax or the amount of tax due.

28 (3) It has been finally determined that the whole or any  
29 part of an alleged deficiency tax, asserted by the Federal  
30 Government beyond that admitted to be payable, and in

1 consequence of which an estate tax was paid under section  
2 2117 (relating to estate tax) was not payable.

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

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

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

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

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

26 Section 2704. Petition procedure.

27 (a) Content of petition.--

28 (1) A petition for reassessment shall state:

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

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

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

5           (2) A petition for refund shall state:

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

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

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

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

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

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

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

30           (e) Exception to time limit for decision and order.--If at

1 the time of the filing of a petition proceedings are pending in  
2 a court of competent jurisdiction or at the Pennsylvania Tax  
3 Review Tribunal wherein any claim made in the petition may be  
4 established, the department, upon the written request of the  
5 petitioner, may defer consideration of the petition until the  
6 final judgment determining the question or questions involved in  
7 the petition has been decided. If consideration of the petition  
8 is deferred, the department shall issue a decision and order  
9 disposing of the petition within six months after the final  
10 judgment.

11 (f) Failure of department to take action.--The failure of  
12 the department to dispose of the petition within the time period  
13 provided for by subsection (d) or (e) shall act as a denial of  
14 the petition. Notice of the department's failure to take action  
15 and the denial of the petition shall be mailed to the  
16 petitioner.

17 Section 2705. Review by Pennsylvania Tax Review Tribunal.

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

23 (b) Petition for review of denial by department's failure to  
24 act.--A petition for review may be filed with the Pennsylvania  
25 Tax Review Tribunal within 90 days after the mailing date of the  
26 department's notice to the petitioner of its failure to dispose  
27 of the petition within the time periods prescribed by section  
28 2704(d) or (e) (relating to petition procedure).

29 Section 2706. Burden of proof.

30 In all cases of petitions filed pursuant to this article, the

burden of proof shall be upon the petitioner or appellant, as the case may be.

Section 2707. Compromise of tax appeals.

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

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

ARTICLE XXVIII

TAX REVIEW TRIBUNAL

Section 2801. Definitions.

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

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

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

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

Section 2802. Tax Review Tribunal; establishment.

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

(b) Appointment of judges.--The tribunal shall consist of no less than five qualified and competent administrative law judges, including a chief administrative law judge. The

administrative law judges shall be appointed by the State Treasurer, with the approval of the Board of Finance and Revenue. The State Treasurer, with the approval of the Board of Finance and Revenue, shall have the power to appoint as many additional qualified and competent administrative law judges as may be necessary to fulfill the duties of the tribunal.

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

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

Administrative law judges may be reappointed upon the expiration of their terms.

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

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

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

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

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

13 Section 2803. Qualifications of judges and prohibition.

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

16         (1) Be a citizen of the United States.

17         (2) Be a resident of this Commonwealth.

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

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

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

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



1 States.

2 Section 2804. Administration.

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

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

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

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

22 Section 2805. Jurisdiction of tribunal.

23 (a) Exclusive and final authority.--Except as permitted by  
24 section 2817 (relating to appeals), the tribunal shall be the  
25 sole, exclusive and final authority for the hearing, review and  
26 determination of questions of law and fact arising under a  
27 decision and order of the department pursuant to Article XXVII  
28 (relating to procedure and administration). Notwithstanding any  
29 other provision of law, the tribunal shall have jurisdiction  
30 over all matters relating to decisions of the department mailed

after December 31, 2006, regarding reassessment,  
redetermination, resettlement or refund.

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

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

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

(2) Where a bond is required by statute.

(d) Characterization of certain petitions.--If the taxpayer  
pays all or part of the tax or other amount at issue before the  
tribunal has rendered a decision, the tribunal shall treat the  
taxpayer's petition as a protest of a denial of a claim for  
refund of the amount paid without further action on the part of  
the taxpayer.

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

1 matter, including the constitutional issue, is presented to the  
2 Commonwealth Court.

3 Section 2806. Filing fees.

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

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

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

22 Section 2807. Pleadings.

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

27 (b) Taxpayer election.--A taxpayer may elect to proceed in  
28 the small claims division of the tribunal by filing a petition  
29 in the form prescribed by the tribunal for small claims. A  
30 taxpayer may not revoke an election to proceed in the small

claims division and shall not have any further right to appeal or bring suit.

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

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

(e) Amendment of pleading.--Either party may amend a pleading once without leave at any time before the period for responding to it expires. After expiration of the response

1 period, a pleading may be amended only with the written consent  
2 of the adverse party or with the permission of the tribunal. The  
3 tribunal shall freely grant consent to amend upon such terms as  
4 may be just. Except as otherwise ordered by the tribunal, there  
5 shall be an answer or reply to an amended pleading if an answer  
6 or reply is required to the pleading being amended. Filing of  
7 the answer, or, if the answer has already been filed, the  
8 amended answer, shall be made no later than 75 days after filing  
9 of the amended petition. Filing of the reply or, if the reply  
10 has already been filed, the amended reply, shall be made within  
11 30 days after filing of the amended answer. The taxpayer may not  
12 amend a petition after expiration of the time for filing a  
13 petition, if the amendment would have the effect of conferring  
14 jurisdiction on the tribunal over a matter which otherwise would  
15 not come within its jurisdiction. An amendment of a pleading  
16 shall relate back to the time of filing of the original pleading  
17 unless the tribunal shall order otherwise either on motion of a  
18 party or on the tribunal's own initiative.

19 Section 2808. Presiding judge.

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

1 judge shall assign the matter to another judge.

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

5 (1) Administer oaths and affirmations.

6 (2) Issue subpoenas authorized by law.

7 (3) Rule upon offers of proof and receive relevant  
8 evidence, take or cause depositions to be taken whenever the  
9 ends of justice would be served thereby.

10 (4) Regulate the course of the hearing.

11 (5) Hold conferences for settlement or simplification of  
12 the issues by consent of the parties.

13 (6) Dispose of procedural requests or similar matters.

14 (7) Make decisions or recommend decisions in conformity  
15 within this article.

16 (8) Take any other action authorized by law or the rules  
17 of the tribunal.

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

25 Section 2809. Procedures in general.

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

30 (b) Submission of evidence.--A party is entitled to present

1 the party's case or defense by oral or documentary evidence, to  
2 submit rebuttal evidence and to conduct such cross-examination  
3 as may be required for a full and true disclosure of the facts.  
4 The tribunal may adopt rules for the submission of all or part  
5 of the evidence in written form.

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

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

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

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

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

Section 2810. Prehearing procedures.

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



1 may at any time amend, by deletion or supplementation, their  
2 evidentiary exhibits and witness lists.

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

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

20 Section 2811. Oaths and subpoenas.

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

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

1 Civil Procedure.

2 Section 2812. Discovery.

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

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

14 (c) Interrogatories.--Any party to a proceeding may serve  
15 written interrogatories upon any other party for purposes of  
16 discovering relevant, unprivileged information. A party served  
17 with interrogatories may, before the time prescribed by the  
18 tribunal for answering the interrogatories, apply to the  
19 presiding judge for the holding of a prehearing conference for  
20 the mutual exchange of evidence exhibits and other information.  
21 Each interrogatory which requests information not previously  
22 supplied at a prehearing conference or hearing shall be answered  
23 separately and fully in writing under oath unless it is objected  
24 to, in which event the reasons for the objections shall be  
25 stated in lieu of an answer. The party upon whom the  
26 interrogatories have been served shall serve a copy of the  
27 answers and objections within the time prescribed by the  
28 tribunal unless otherwise specified, upon the party submitting  
29 the interrogatories. The party submitting the interrogatories  
30 may petition the presiding officer for an order compelling an

answer to an interrogatory or interrogatories to which there has been an objection or other failure to answer.

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

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

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

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

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

#### Section 2813. Hearings.

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

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

(c) Hearings to be public; exceptions.--

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

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

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

12       (e) Testimony.--Testimony may be given only on oath or  
13       affirmation.

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

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

27       Section 2814. Decisions.

28       (a) Decision in writing.--The tribunal shall render its  
29       decision in writing, including a concise statement of the facts  
30       found and the conclusions of law reached. The tribunal's

decision shall, subject to law, grant the relief, invoke the remedies and issue the orders as it deems appropriate to carry out its decision.

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

(c) Precedent.--Except as provided in section 2816(k) (relating to small claims division), the tribunal's interpretation of a taxing statute subject to contest in one case shall be followed by the tribunal in subsequent cases involving the same statute, and its application of a statute to the facts of one case shall be followed by the tribunal in subsequent cases involving the same material facts unless the tribunal's interpretation or application conflicts with that of an appellate court or the tribunal provides satisfactory reasons for reversing prior precedent, provided:

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

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

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

Section 2815. Proposed decision; review by panel.

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

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

9     (c) Exceptions procedure.--

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

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

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

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

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

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

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

30         (1) Findings and conclusions, and the reasons or basis

1 for the findings and conclusions, on all material issues of  
2 fact, law or discretion presented on the record.

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

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

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

12 Section 2816. Small claims division.

13 (a) Establishment.--There is hereby established a small  
14 claims division of the tribunal.

15 (b) Judge to preside.--An administrative law judge assigned  
16 by the chief administrative law judge as provided in section  
17 2802 (relating to Tax Review Tribunal; establishment) shall  
18 preside over proceedings within the jurisdiction of the small  
19 claims division.

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

27 (d) Jurisdiction.--If the taxpayer elects in its petition  
28 for review filed pursuant to Article XXVII and the department  
29 agrees in its answer to the taxpayer's petition, the small  
30 claims division shall have jurisdiction over any proceeding

1 regardless of the amount in controversy.

2 (e) Answer.--No later than 30 days after receipt of notice  
3 that the taxpayer has filed a petition in proper form or at  
4 other times as the tribunal may order, the department shall file  
5 with the tribunal an answer similar to that required by section  
6 2807 (relating to pleadings).

7 (f) Withdrawal.--At any time prior to entry of judgment, a  
8 taxpayer may withdraw a proceeding in the small claims division  
9 by notifying the chief clerk of the tribunal in writing. A  
10 withdrawal shall be with prejudice and shall not have the effect  
11 of revoking the election to proceed in the small claims  
12 division.

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

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

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

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

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

28 (j) Decision final.--A final decision and order of the small  
29 claims division shall be conclusive upon all parties and may not  
30 be appealed. A decision and order of the small claims division



1 shall not be considered as precedent in any other case, hearing  
2 or proceeding.

3 (k) Inapplicability.--Sections 2815 (relating to proposed  
4 decision; review by panel), 2818 (relating to representation),  
5 2819 (relating to publication of decisions) and this section  
6 shall not apply to proceedings in the small claims division.  
7 Section 2817. Appeals.

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

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

20 (c) Record.--The record on judicial review shall include the  
21 decision and order of the tribunal, the stenographic transcript  
22 of the hearing before the tribunal, the pleadings, exhibits,  
23 documents and other items admitted into evidence.  
24 Section 2818. Representation.

25 (a) Taxpayer.--Appearances in proceedings conducted by the  
26 tribunal may be by the taxpayer or by an attorney admitted to  
27 practice in this Commonwealth. Parties may also be represented  
28 by an attorney who is a member of or is employed by an  
29 accounting or other professional services firm, by an accountant  
30 licensed in this Commonwealth or by an enrolled agent authorized

1 to practice before the Internal Revenue Service provided the  
2 representation does not constitute the unauthorized practice of  
3 law as determined by the Supreme Court of this Commonwealth.

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

7 Section 2819. Publication of decisions.

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

14 Section 2820. Service of process.

15 (a) Personal service.--The mailing by first class mail,  
16 postage prepaid, to the address of the taxpayer, as given on the  
17 taxpayer's petition, or to the address of the taxpayer's  
18 representative of record, if any, or to the usual place of  
19 business of the department, or its representative of record,  
20 shall constitute personal service on the other party. The  
21 tribunal may by rule prescribe that notice by other means shall  
22 constitute personal service and may in any individual case order  
23 that notice be given to additional persons or by other means.

24 (b) Date.--Mailing by registered or certified mail and  
25 delivery by a private delivery service approved by the Internal  
26 Revenue Service in accordance with section 7502(f) of the  
27 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
28 7502(f)), of any pleading, decision, order, notice or other  
29 document in respect to proceedings before the tribunal shall be  
30 deemed to have occurred on the date of mailing or the date of

1 submission to the private delivery service.

2 Section 2821. Code of ethics.

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

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

9 (2) Perform all duties impartially and diligently.

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

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

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

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

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

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

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

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

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

15 Section 2822. Rules and forms.

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

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

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

28                   ARTICLE XXIX-C

29                   TAX CLEARANCE FOR RENEWALS OF LICENSES,

30                   PERMITS AND REGISTRATIONS

1 Section 2901-C. Statement of policy.

2 The public has a right to be protected from unscrupulous or  
3 fraudulent practices, and it depends on the licensing agencies  
4 within the Commonwealth to provide a measure of security that  
5 license applicants and licensees in good standing, as well as  
6 other professionals, will conduct business fairly, honestly and  
7 in compliance with applicable licensure requirements. Failure to  
8 comply with the tax laws of this Commonwealth is considered  
9 unprofessional conduct that is not in keeping with Commonwealth  
10 standards for licensing.

11 Section 2902-C. Definitions.

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

15 "Applicant." A person or entity that applies to a licensing  
16 agency for a license or applies for renewal. In the case of the  
17 transfer of an existing license, the transferor or the  
18 transferee. The term includes a management company utilized by  
19 such person, entity, transferor or transferee.

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

21 "Department of State." The Department of State, and any  
22 licensing board, division or commission under the Bureau of  
23 Professional and Occupational Affairs, and the Bureau of  
24 Commissions and Legislation with respect to notaries public.

25 "Entity." An association, business trust, corporation,  
26 estate, general partnership, government, joint venture  
27 partnership, limited liability company, limited liability  
28 partnership, restricted professional company, sole  
29 proprietorship or trust.

30 "License." A license, permit, certificate, commission or

registration granted or issued by a licensing agency that confers benefits, privileges or rights to the licensee, permit holder or registrant to practice a trade, profession or occupation or to conduct a business activity within this Commonwealth.

"Licensing agency." The Department of Revenue, the Department of Labor and Industry, the Department of Environmental Protection, the Department of Banking, the Department of State, the Insurance Department or the Pennsylvania Securities Commission.

"State tax." A tax liability, including interest, penalty and additions of a taxpayer, licensee, employer or other person imposed under this act, the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, or 75 Pa.C.S. § 9014 (relating to collection of unpaid taxes).

"Tax delinquency." The condition by which a State tax, when delinquent, is subject to collection action by the taxing agency or the Office of Attorney General and is not subject to a timely administrative or judicial appeal, a duly authorized deferred payment plan or the jurisdiction of a bankruptcy court.

"Tax identification number." A Social Security number or employer identification number.

"Taxing agency." The Department of Revenue or the Department of Labor and Industry.

Section 2903-C. Tax identity information.

(a) General rule.--An applicant for the grant, renewal or transfer of a license shall provide to the licensing agency, other than as provided for in subsection (b), the applicant's or entity's full name and tax identification number.

1     (b) Pennsylvania Securities Commission.--An applicant for  
2 the grant, renewal or transfer of a license issued by the  
3 Pennsylvania Securities Commission shall comply with any  
4 regulation or order adopted by the Pennsylvania Securities  
5 Commission for the implementation of this article.

6 Section 2904-C. Confidentiality.

7     (a) General rule.--Upon the filing of an application with a  
8 licensing agency for the grant, renewal or transfer of a  
9 license, the applicant waives any confidentiality with respect  
10 to State tax information regarding the applicant in the  
11 possession of the taxing agency or the Office of Attorney  
12 General, regardless of the source of that information, and  
13 consents to the provision of that information to the licensing  
14 agency by the taxing agency and the Office of Attorney General.

15     (b) Construction.--For the purpose of this section,  
16 licensing agencies shall be deemed to be performing an official  
17 tax purpose pursuant to the provisions of section 731 of the act  
18 of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

19 Section 2905-C. Request of tax status.

20     Upon receipt of an application for the grant, renewal or  
21 transfer of a license, the licensing agency shall forward the  
22 tax identity information provided by the applicant under section  
23 2903-C (relating to tax identity information) to the department,  
24 the Office of Attorney General and the Department of Labor and  
25 Industry to determine the tax status of the applicant or  
26 licensee. The taxing agency and the Office of Attorney General  
27 may use reasonable parameters in determining whether an  
28 applicant has filed required State tax reports or paid State tax  
29 due. If there is a tax delinquency or a required report has not  
30 been filed, the taxing agency may issue a notice to the

licensing agency and to the licensee or applicant as provided in section 2907-C (relating to notice requirements) specifying that the applicant or licensee has not filed a required return or paid a State tax.

Section 2906-C. Withholding of license.

Notwithstanding any law to the contrary, a license application shall be deemed incomplete and a licensing agency shall not approve any application for grant, renewal or transfer of any license if a notice of tax delinquency is issued. As a condition of licensure or continued licensure, unless otherwise provided in section 2912-C (relating to exception for continued licensure only) an applicant or licensee shall cure any tax delinquency identified by a taxing agency by filing the appropriate report, paying the appropriate tax or entering into an agreement with the taxing agency for a periodic payment plan prior to obtaining a license or renewal from a licensing agency.

Section 2907-C. Notice requirements.

Notice to a licensee or applicant for license or transfer of license shall be as follows:

(1) Prior to the issuance of an order denying or suspending a license or refusing to renew a license the applicable taxing agency shall provide notice to the applicant or licensee that specifies:

(i) Any reports which must be filed and any amounts owed.

(ii) How, when and where the notice can be contested.

(iii) Where payment may be made in order to cure the tax delinquency or whom the individual may contact to attempt to establish a payment plan.



1           (iv) That the sole grounds for contesting the notice  
2           are limited to mistaken identity of the licensee.

3           (v) That an order to deny an application for license  
4           or to deny transfer of the license or to automatically  
5           suspend the license will be issued by the licensing  
6           agency 60 days after the issuance of the notice, unless  
7           the delinquent report is filed, the State tax is paid or  
8           a payment plan is approved by the applicable taxing  
9           agency.

10           (vi) The appropriate procedures and time  
11           requirements for requesting a hearing to which the  
12           applicant or licensee may otherwise be entitled under the  
13           licensing agency.

14           (vii) That further challenge following a license  
15           suspension as a result of failure to cure a tax  
16           delinquency shall require the applicant to post a bond as  
17           set forth under section 2909-C (relating to bond  
18           requirement on appeal).

19           (2) Any agreement providing for a periodic payment plan  
20           entered into between the taxing agency and the applicant or  
21           licensee shall specify that failure to comply with the  
22           schedule of payments may result in the immediate suspension,  
23           nonrenewal or denial of the license without further right to  
24           a hearing.

25           (3) To contest the notice or obtain a periodic payment  
26           plan, the licensee or applicant must contact the applicable  
27           taxing agency not later than 20 days after issuance of the  
28           notice. The grounds for contesting shall be limited to  
29           mistaken identity. If, as determined by the taxing agency, a  
30           mistake has occurred, the notice provided to the licensing

1 agency under section 2905-C (relating to request of tax  
2 status) shall be modified accordingly within 20 days of the  
3 appropriate taxing agency being contacted.

4 (4) Any tax liability which has become final shall not  
5 be subject to collateral attack in a proceeding by a  
6 licensing agency.

7 Section 2908-C. Penalty for noncompliance.

8 A person that practices a trade, profession or occupation or  
9 conducts a business activity without a license under this  
10 section commits a misdemeanor. The penalty imposed under this  
11 section shall be in addition to any other penalty imposed by  
12 law.

13 Section 2909-C. Bond requirement on appeal.

14 If an applicant or licensee challenges any adverse action on  
15 a license application or renewal as a result of failure to cure  
16 a tax delinquency by appealing the matter to the Commonwealth  
17 Court, the applicant shall post a bond with the court in the  
18 amount of 120% of the liability at issue.

19 Section 2910-C. Ongoing enforcement.

20 If, during the effective period of any license, the licensee  
21 fails to file any required State tax report, fails to pay any  
22 collectible State tax due or defaults in a deferred payment  
23 plan, the taxing agency or the Office of Attorney General, after  
24 complying with section 2907-C (relating to notice requirements),  
25 may notify the licensing agency which shall suspend or not renew  
26 any license issued to the licensee. Notwithstanding the  
27 provisions of any other statute, the license suspension or  
28 nonrenewal shall be for an indefinite period of time and shall  
29 remain in effect until the licensee files the required reports,  
30 pays the State tax due or cures the deferred payment plan

1 default.

2 Section 2911-C. Stay of process.

3 The appropriate taxing agency may stay the process for  
4 suspension, nonrenewal or denial beyond the notice period  
5 specified in section 2907-C(1)(v)(relating to notice  
6 requirements) if additional time is required for it to process a  
7 case or reach a payment plan with the licensee. The taxing  
8 agency shall notify the licensing agency of the intent to stay  
9 the suspension, nonrenewal or denial at least five working days  
10 before the notice period has expired.

11 Section 2912-C. Exception for continued licensure only.

12 A licensing agency may make a determination that a license is  
13 vital to prevent an immediate threat to the health, safety and  
14 welfare of the public. The licensing agency shall notify the  
15 applicable taxing agency of the determination. If this  
16 determination is made, then notwithstanding the requirements of  
17 this article, the licensing agency may use its discretion to  
18 renew a license or to refrain from suspending a license but may  
19 not grant a license to a new applicant until the applicant files  
20 the required reports, pays the State tax due or cures the  
21 deferred payment plan default.

22 Section 33. Section 3003.1 of the act is repealed.

23 Section 34. Section 3003.2(b) and (i) of the act, amended  
24 June 29, 2002 (P.L.559, No.89) and December 23, 2003 (P.L.250,  
25 No.46), are amended to read:

26 Section 3003.2. Estimated Tax.--\* \* \*

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

30 (1) "Estimated tax." Estimated corporate net income tax,

1 estimated capital stock and franchise tax, estimated mutual  
2 thrift institution tax, estimated insurance premiums tax,  
3 estimated gross receipts tax or estimated public utility realty  
4 surcharge.

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

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

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

14 (4.1) "Estimated insurance premiums tax." The amount which  
15 the insurance company estimates as the amount of tax imposed by  
16 section 902 of Article IX for the taxable year.

17 (4.2) "Estimated gross receipts tax." The amount which the  
18 taxpayer estimates as the amount of tax imposed by section 1101  
19 of Article XI for the taxable year.

20 (4.3) "Person." Any natural person, association, fiduciary,  
21 partnership, corporation or other entity, including the  
22 Commonwealth, its political subdivisions and instrumentalities  
23 and public authorities. Whenever used in any clause prescribing  
24 and imposing a penalty or imposing a fine or imprisonment, or  
25 both, the term "person," as applied to an association, shall  
26 include the members thereof and, as applied to a corporation,  
27 the officers thereof.

28 (4.4) "Safe harbor base year." The taxpayer's second  
29 preceding taxable year. If the second preceding taxable year is  
30 less than twelve months, then the "safe harbor base year" shall

1 mean the taxpayer's annualized second preceding taxable year. If  
2 the taxpayer has filed only one previous report, the "safe  
3 harbor base year" shall mean the first preceding taxable year.  
4 If the first preceding taxable year is less than twelve months,  
5 then the "safe harbor base year" shall mean the taxpayer's  
6 annualized first preceding taxable year.

7 (4.5) "Estimated public utility realty surcharge." The  
8 amount which the taxpayer estimates as the amount of surcharge  
9 imposed by section 1111-A of Article XI-A for the taxable year.

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

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

15 \* \* \*

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

1       Section 35. Section 3003.3 of the act, amended May 7, 1997  
2       (P.L.85, No.7) and December 23, 2003 (P.L.250, No.46), is  
3       amended to read:

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

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

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

1 the total tax; over

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

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

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

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

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

17 (d) Notwithstanding the provisions of the preceding  
18 subsections, other than as set forth in subsection (d.1).  
19 interest with respect to any underpayment of any installment of  
20 estimated tax shall not be imposed if the total amount of all  
21 payments of estimated tax made on or before the last date  
22 prescribed for the payment of such installment equals or exceeds  
23 the amount which would have been required to be paid on or  
24 before such date if the estimated tax were an amount equal to  
25 the tax computed at the rates applicable to the taxable year,  
26 including any minimum tax imposed, but otherwise on the basis of  
27 the facts shown on the report of the taxpayer for, and the law  
28 applicable to, the safe harbor base year, adjusted for any  
29 changes to sections 401, 601, 602 and 1101 enacted for the  
30 taxable year, if a report showing a liability for tax was filed

1 by the taxpayer for the safe harbor base year. If the total  
2 amount of all payments of estimated tax made on or before the  
3 last date prescribed for the payment of such installment does  
4 not equal or exceed the amount required to be paid per the  
5 preceding sentence, but such amount is paid after the date the  
6 installment was required to be paid, then the period of  
7 underpayment shall run from the date the installment was  
8 required to be paid to the date the amount required to be paid  
9 per the preceding sentence is paid. Provided, that if the  
10 [settled] total tax for the safe harbor base year exceeds the  
11 tax shown on such report by ten per cent or more, the [settled]  
12 total tax adjusted to reflect the current tax rate shall be used  
13 for purposes of this subsection. [, except that, if the settled  
14 tax is subsequently resettled, the amount of tax as resettled  
15 shall be utilized in the application of this subsection without  
16 the necessity of the filing of any petition by the department or  
17 by the taxpayer.] In the event that the [settled or resettled]  
18 total tax for the safe harbor base year exceeds the tax shown on  
19 the report by ten per cent or more, interest resulting from the  
20 utilization of such [settled or resettled] total tax in the  
21 application of the provisions of this subsection shall not be  
22 imposed if, within forty-five days of the mailing date of [such  
23 settlement or resettlement] each assessment, payments are made  
24 such that the total amount of all payments of estimated tax  
25 equals or exceeds the amount which would have been required to  
26 be paid on or before such date if the estimated tax were an  
27 amount equal to such [settled or resettled] total tax adjusted  
28 to reflect the current tax rate. In any case in which the  
29 taxable year for which an underpayment of estimated tax may  
30 exist is a short taxable year, in determining the tax shown on



1 the report or the [settled or resettled] total tax for the safe  
2 harbor base year, the tax will be reduced by multiplying it by  
3 the ratio of the number of installment payments made in the  
4 short taxable year to the number of installment payments  
5 required to be made for the full taxable year.

6 (d.1) (1) Notwithstanding the provisions of subsections  
7 (a), (b) and (c), interest with respect to any underpayment of  
8 any installment of estimated corporate net income tax for any  
9 tax year that begins in year 2007 or 2008 shall not be imposed  
10 if the total amount of all payments of estimated corporate net  
11 income tax made on or before the last date prescribed for the  
12 payment of such installment equals or exceeds the amount which  
13 would have been required to be paid on or before such date if  
14 the estimated tax were an amount equal to the tax shown on the  
15 report of the taxpayer for the safe harbor base year, if a  
16 report showing a liability for tax was filed by the taxpayer for  
17 the safe harbor base year.

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

26 (3) If the total tax for the safe harbor base year exceeds  
27 the tax shown on such report by ten per cent or more, the total  
28 tax shall be used for purposes of this subsection. In the event  
29 that the total tax for the safe harbor base year exceeds the tax  
30 shown on the report by ten per cent or more, interest resulting

1 from the utilization of the total tax in the application of the  
2 provisions of this subsection shall not be imposed if, within  
3 forty-five days of the mailing date of a notice from the  
4 department increasing the total tax, payments are made such that  
5 the total amount of all payments of estimated tax equals or  
6 exceeds the amount which would have been required to be paid on  
7 or before such date if the estimated tax were an amount equal to  
8 the total tax.

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

17 (d.2) (1) If there is a substantial underpayment, as  
18 defined in subsection (a), of any installment of estimated  
19 corporate net income tax or estimated capital stock/franchise  
20 tax for any taxable year beginning in 2007 or 2008, there shall  
21 be imposed additional interest in an amount determined at one  
22 hundred twenty per cent of the annual rate as provided by law  
23 upon the entire underpayment for the period of the substantial  
24 underpayment.

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

28 Section 36. Sections 3003.5(a) and 3003.6 of the act, added  
29 June 16, 1994 (P.L.279, No.48), are amended to read:

30 Section 3003.5. Refund Petitions.--(a) Effective January 1,

1 1995, petitions for refund of taxes, penalties, fines, additions  
2 and other moneys collected by the Department of Revenue except  
3 those claims for refunds of liquid fuels taxes paid by political  
4 subdivisions, farmers, nonpublic schools not operated for  
5 profit, volunteer fire companies, volunteer rescue squads,  
6 volunteer ambulance services, users of liquid fuel in propeller-  
7 driven aircraft or engines and agencies of the Federal  
8 Government and of the Commonwealth and the Boat Fund of the  
9 Pennsylvania Fish and Boat Commission shall be heard and  
10 determined by the Department of Revenue as provided in the act  
11 of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code,"  
12 and the Department of Revenue shall thereafter have, except as  
13 set forth in Article XXVII, the powers and duties formerly  
14 granted to the Board of Finance and Revenue with respect to such  
15 refunds. Also effective January 1, 1995, the Board of Finance  
16 and Revenue shall no longer have the power and duty to hear and  
17 determine any petition for refund of taxes, penalties, fines,  
18 additions or other moneys collected by the Department of  
19 Revenue, except that thereafter the board may either hear and  
20 determine any such petitions filed with it prior to January 1,  
21 1995, or it may transfer such petitions to the Department of  
22 Revenue.

23 \* \* \*

24 Section 3003.6. Timely Filing.--A taxpayer shall be deemed  
25 to have timely filed a [petition for resettlement, a] petition  
26 for reassessment[, a petition for redetermination] or any other  
27 protest relating to the assessment of tax or any other matter  
28 relating to any tax imposed by this act if the letter  
29 transmitting the petition is received by the Department of  
30 Revenue or is postmarked by the United States Postal Service on

or prior to the final day on which the petition is required to be filed.

Section 37. The act is amended by adding a section to read:

Section 3003.16. Assessments to be Made by Department of Revenue.--(a) Parts IV, V, VI and VII of Article IV shall apply to:

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

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

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

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

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

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

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

(1) The procedure for collection of moneys due the Commonwealth by county or city officers as provided by Article

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

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

7 Section 38. The amendment of sections 301 and 303 of the act  
8 shall not be construed to extend the limitations of sections 348  
9 and 3003.1 of the act.

10 Section 39. (a) Sections 6, 7, 8 and 9 of the act of May  
11 23, 1945 (P.L.893, No.360), known as the Co-operative  
12 Agricultural Association Corporate Net Income Tax Act, are  
13 repealed.

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

16 Section 40. This act shall apply as follows:

17 (1) The addition of Articles XXVII and XXVIII of the act  
18 shall apply to all decisions and orders of the Department of  
19 Revenue mailed after December 31, 2006, regarding a petition  
20 for reassessment, redetermination, resettlement or refund.

21 (2) Except as set forth in paragraph (3), the amendment  
22 or addition of sections 301(a), (d), (h.1), (h.2), (h.3), (q)  
23 and (s.3) and 303(a.4), (a.5) and (a.6) of the act shall  
24 apply to taxable years beginning after December 31, 2002.

25 (3) References to section 409A(a)(2), (3) and (4) of the  
26 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §  
27 409A(a)(2), (3) and (4)) in sections 301 and 303 of the act  
28 shall apply to taxable years beginning after December 31,  
29 2004.

30 (4) The amendment or addition of the following

provisions shall apply to taxable years beginning after  
December 31, 2006:

(i) Section 401(3)1(a) and (b), 2 and 4(c)(5), (7),  
(8), (9), (10), (11) and (12) of the act.

(ii) Section 402(b) of the act.

(iii) Section 403 of the act.

(iv) Section 406 of the act.

(v) Section 407.1 of the act.

(vi) Section 407.2 of the act.

(vii) Section 407.3 of the act.

(viii) Section 407.4 of the act.

(ix) Section 408(b) of the act.

(x) Section 408.1 of the act.

(xi) Section 408.2 of the act.

(xii) Section 1101(e) of the act.

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

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

(xv) Section 3003.3 of the act.

(xvi) Section 3003.6 of the act.

(xvii) Section 3003.16 of the act.

(5) The repeal under section 39(a) of this act shall  
apply to taxable years beginning on or after January 1, 2007.  
Section 41. This act shall take effect as follows:

(1) The addition of Article III Pt. VII-B of the act  
shall take effect January 1, 2006.

(2) The addition of Article XXVIII of the act shall take  
effect July 1, 2006.

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

(i) Section 230 of the act.

1           (ii) Section 232 of the act.  
2           (iii) Section 234 of the act.  
3           (iv) Section 247.1 of the act.  
4           (v) Section 250 of the act.  
5           (vi) Section 251 of the act.  
6           (vii) Section 252 of the act.  
7           (viii) Section 253 of the act.  
8           (ix) Section 254 of the act.  
9           (x) Section 256 of the act.  
10          (xi) Section 338 of the act.  
11          (xii) Section 339 of the act.  
12          (xiii) Section 340 of the act.  
13          (xiv) Section 341 of the act.  
14          (xv) Section 350 of the act.  
15          (xvi) Section 1111-C of the act.  
16          (xvii) Section 1112-C of the act.  
17          (xviii) Section 1113-C of the act.  
18          (xix) Section 2005 of the act.  
19          (xx) Section 2009 of the act.  
20          (xxi) Section 2181 of the act.  
21          (xxii) Article XXVII of the act.  
22          (xxiii) Section 3003.1 of the act.  
23          (xxiv) Section 3003.5 of the act.  
24          (xxv) Section 39(a) of this act.  
25          (6) The remainder of this act shall take effect July 1,  
26          2005, or immediately, whichever is later.