

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 300 Session of 2005

INTRODUCED BY ARMSTRONG, JUBELIRER, BRIGHTBILL, MADIGAN, RHOADES, SCARNATI, WAUGH, PILEGGI, KASUNIC, WENGER, THOMPSON, EARLL, WONDERLING, CORMAN, RAFFERTY, KITCHEN, GREENLEAF, TOMLINSON, PUNT, VANCE, PIPPY, GORDNER, PICCOLA, LEMMOND, D. WHITE, COSTA, CONTI, M. WHITE, BOSCOLA, ERICKSON, ROBBINS, ORIE, O'PAKE, C. WILLIAMS AND REGOLA, FEBRUARY 15, 2005

SENATE AMENDMENTS TO HOUSE AMENDMENTS, JULY 1, 2006

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 personal income tax, for~~
 11 ~~medical and health savings accounts; and repealing provisions~~
 12 ~~relating to taxation of medical and health savings accounts.~~
 13 AMENDING THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), ENTITLED "AN <—
 14 ACT RELATING TO TAX REFORM AND STATE TAXATION BY CODIFYING
 15 AND ENUMERATING CERTAIN SUBJECTS OF TAXATION AND IMPOSING
 16 TAXES THEREON; PROVIDING PROCEDURES FOR THE PAYMENT,
 17 COLLECTION, ADMINISTRATION AND ENFORCEMENT THEREOF; PROVIDING
 18 FOR TAX CREDITS IN CERTAIN CASES; CONFERRING POWERS AND
 19 IMPOSING DUTIES UPON THE DEPARTMENT OF REVENUE, CERTAIN
 20 EMPLOYERS, FIDUCIARIES, INDIVIDUALS, PERSONS, CORPORATIONS
 21 AND OTHER ENTITIES; PRESCRIBING CRIMES, OFFENSES AND
 22 PENALTIES," FURTHER PROVIDING, IN SALES AND USE TAX, FOR
 23 EXCLUSIONS; FURTHER PROVIDING, IN PERSONAL INCOME TAX, FOR
 24 DEFINITIONS, FOR CLASSES OF INCOME, FOR ELECTION BY SMALL
 25 CORPORATION, FOR MANNER OF MAKING ELECTION, FOR REVOCATION OF
 26 ELECTION, FOR TERMINATION BY CORPORATION CEASING TO BE A
 27 SMALL CORPORATION, FOR REVOCATION OR TERMINATION YEAR AND FOR
 28 ELECTION AFTER REVOCATION OR TERMINATION; FURTHER PROVIDING,
 29 IN CAPITAL STOCK FRANCHISE TAX, FOR THE DEFINITIONS OF
 30 "AVERAGE NET INCOME," "CAPITAL STOCK VALUE" AND "CORPORATION"

1 AND FOR IMPOSITION; FURTHER PROVIDING, IN REALTY TRANSFER
2 TAX, FOR STAMPS, COMMISSIONS, PAYMENTS AND TRANSFERS; FURTHER
3 PROVIDING, IN INHERITANCE TAX, FOR VALUATION OF CERTAIN
4 FARMLAND; AND MAKING RELATED REPEALS AND REPEALING A
5 PROVISION RELATING TO TAXATION OF RESTRICTED PROFESSIONAL
6 COMPANIES.

7 ~~The General Assembly finds and declares as follows:~~ <—

8 ~~It is the intent of the General Assembly to address the~~
9 ~~personal income tax treatment of health savings accounts~~
10 ~~pursuant to section 223 of the Internal Revenue Code of 1986~~
11 ~~(Public Law 99 514, 26 U.S.C. § 223).~~

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

14 ~~Section 1. Section 303(a)(6) of the act of March 4, 1971~~ <—
15 ~~(P.L.6, No.2), known as the Tax Reform Code of 1971, amended~~
16 ~~July 7, 2005 (P.L.149, No.40), is amended and the section is~~
17 ~~amended by adding a subsection to read:~~

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

20 * * *

21 ~~(6) Interest derived from obligations which are not~~
22 ~~statutorily free from State or local taxation under any other~~
23 ~~act of the General Assembly of the Commonwealth of Pennsylvania~~
24 ~~or under the laws of the United States and any amount paid under~~
25 ~~contract of life insurance or endowment or annuity contract,~~
26 ~~which is includable in gross income for Federal income tax~~
27 ~~purposes[.] and any amount paid out of the Archer Medical~~
28 ~~Savings Account or health savings account that is includable in~~
29 ~~the gross income of an account beneficiary for Federal income~~
30 ~~tax purposes.~~

31 * * *

32 ~~(a.6) Except as provided in this article and without regard~~

1 ~~to sections 220(f)(4) and 223(f)(4) of the Internal Revenue Code~~
2 ~~of 1986, the requirements of sections 106(b) and (d), 220 and~~
3 ~~223 of the Internal Revenue Code of 1986, as amended to January~~
4 ~~1, 2005, shall be applicable.~~

5 * * *

6 Section 2. ~~Repeals are as follows:~~

7 (1) ~~The General Assembly declares that the repeals under~~
8 ~~this section are necessary to effectuate the amendment of~~
9 ~~section 303 of the act.~~

10 (2) ~~Sections 2 and 3 of the act of December 19, 1996~~
11 ~~(P.L.1335, No.179), known as the Medical Care Savings Account~~
12 ~~Act, are repealed.~~

13 (3) ~~Section 4 of the act of July 14, 2005 (P.L.278,~~
14 ~~No.48), known as the Health Savings Account Act, is repealed.~~

15 Section 3. ~~This act shall apply to tax years beginning after~~
16 ~~December 31, 2005.~~

17 Section 4. ~~This act shall take effect immediately.~~

18 SECTION 1. SECTION 204 OF THE ACT OF MARCH 4, 1971 (P.L.6, <—
19 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, IS AMENDED BY
20 ADDING A CLAUSE TO READ:

21 SECTION 204. EXCLUSIONS FROM TAX.--THE TAX IMPOSED BY
22 SECTION 202 SHALL NOT BE IMPOSED UPON ANY OF THE FOLLOWING:

23 * * *

24 (65) THE SALE AT RETAIL OR USE OF INVESTMENT METAL BULLION
25 AND INVESTMENT COINS. "INVESTMENT METAL BULLION" MEANS ANY
26 ELEMENTARY PRECIOUS METAL WHICH HAS BEEN PUT THROUGH A PROCESS
27 OF SMELTING OR REFINING, INCLUDING, BUT NOT LIMITED TO, GOLD,
28 SILVER, PLATINUM AND PALLADIUM, AND WHICH IS IN SUCH STATE OR
29 CONDITION THAT ITS VALUE DEPENDS UPON ITS CONTENT AND NOT ITS
30 FORM. "INVESTMENT METAL BULLION" DOES NOT INCLUDE PRECIOUS METAL

1 WHICH HAS BEEN ASSEMBLED, FABRICATED, MANUFACTURED OR PROCESSED
2 IN ONE OR MORE SPECIFIC AND CUSTOMARY INDUSTRIAL, PROFESSIONAL,
3 AESTHETIC OR ARTISTIC USES. "INVESTMENT COINS" MEANS NUMISMATIC
4 COINS OR OTHER FORMS OF MONEY AND LEGAL TENDER MANUFACTURED OF
5 GOLD, SILVER, PLATINUM, PALLADIUM OR OTHER METAL AND OF THE
6 UNITED STATES OR ANY FOREIGN NATION WITH A FAIR MARKET VALUE
7 GREATER THAN ANY NOMINAL VALUE OF SUCH COINS. "INVESTMENT COINS"
8 DOES NOT INCLUDE JEWELRY OR WORKS OF ART MADE OF COINS, NOR DOES
9 IT INCLUDE COMMEMORATIVE MEDALLIONS.

10 SECTION 2. SECTION 301(N.1), (O.3) AND (S.2) OF THE ACT,
11 AMENDED OR ADDED DECEMBER 23, 1983 (P.L.370, NO.90), MAY 7, 1997
12 (P.L.85, NO.7), MAY 12, 1999 (P.L.26, NO.4) AND JULY 7, 2005
13 (P.L.149, NO.40), ARE AMENDED TO READ:

14 SECTION 301. DEFINITIONS.--ANY REFERENCE IN THIS ARTICLE TO
15 THE INTERNAL REVENUE CODE OF 1986 SHALL MEAN THE INTERNAL
16 REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. § 1 ET SEQ.),
17 AS AMENDED TO JANUARY 1, 1997, UNLESS THE REFERENCE CONTAINS THE
18 PHRASE "AS AMENDED" AND REFERS TO NO OTHER DATE, IN WHICH CASE
19 THE REFERENCE SHALL BE TO THE INTERNAL REVENUE CODE OF 1986 AS
20 IT EXISTS AS OF THE TIME OF APPLICATION OF THIS ARTICLE. THE
21 FOLLOWING WORDS, TERMS AND PHRASES WHEN USED IN THIS ARTICLE
22 SHALL HAVE THE MEANING ASCRIBED TO THEM IN THIS SECTION EXCEPT
23 WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

24 * * *

25 (N.1) "PENNSYLVANIA S CORPORATION" MEANS ANY SMALL
26 CORPORATION AS DEFINED IN SECTION 301(S.2) WHICH [HAS] DOES NOT
27 HAVE A VALID ELECTION UNDER SECTION 307 IN EFFECT. A QUALIFIED
28 SUBCHAPTER S SUBSIDIARY OWNED BY A PENNSYLVANIA S CORPORATION
29 SHALL BE TREATED AS A PENNSYLVANIA S CORPORATION WITHOUT REGARD
30 TO WHETHER AN ELECTION UNDER SECTION 307 HAS BEEN MADE WITH

1 RESPECT TO THE SUBSIDIARY.

2 * * *

3 (O.3) "QUALIFIED SUBCHAPTER S SUBSIDIARY" MEANS A DOMESTIC
4 OR FOREIGN CORPORATION WHICH FOR FEDERAL INCOME TAX PURPOSES IS
5 TREATED AS A QUALIFIED SUBCHAPTER S SUBSIDIARY, AS DEFINED IN
6 SECTION 1361(B)(3)(B) OF THE INTERNAL REVENUE CODE OF 1986
7 (PUBLIC LAW 99-514, 26 U.S.C. § 1361), AS AMENDED TO JANUARY 1,
8 [1997] 2005.

9 * * *

10 (S.2) "SMALL CORPORATION" MEANS ANY CORPORATION WHICH HAS A
11 VALID ELECTION IN EFFECT UNDER SUBCHAPTER S OF CHAPTER 1 OF THE
12 INTERNAL REVENUE CODE OF 1986, AS AMENDED TO JANUARY 1, [1997]
13 2005.

14 SECTION 3. SECTION 303(A)(6) OF THE ACT, AMENDED JULY 7,
15 2005 (P.L.149, NO.40), IS AMENDED AND THE SECTION IS AMENDED BY
16 ADDING SUBSECTIONS TO READ:

17 SECTION 303. CLASSES OF INCOME.--(A) THE CLASSES OF INCOME
18 REFERRED TO ABOVE ARE AS FOLLOWS:

19 * * *

20 (6) INTEREST DERIVED FROM OBLIGATIONS WHICH ARE NOT
21 STATUTORILY FREE FROM STATE OR LOCAL TAXATION UNDER ANY OTHER
22 ACT OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA
23 OR UNDER THE LAWS OF THE UNITED STATES AND ANY AMOUNT PAID UNDER
24 CONTRACT OF LIFE INSURANCE OR ENDOWMENT OR ANNUITY CONTRACT,
25 WHICH IS INCLUDABLE IN GROSS INCOME FOR FEDERAL INCOME TAX
26 PURPOSES[.] AND ANY AMOUNT PAID OUT OF THE ARCHER MEDICAL
27 SAVINGS ACCOUNT (ARCHER MSA) OR HEALTH SAVINGS ACCOUNT THAT IS
28 INCLUDABLE IN THE GROSS INCOME OF AN ACCOUNT BENEFICIARY FOR
29 FEDERAL INCOME TAX PURPOSES.

30 * * *

1 (A.6) EXCEPT AS PROVIDED IN THIS ARTICLE AND WITHOUT REGARD
2 TO SECTIONS 220(F)(4) AND 223(F)(4) OF THE INTERNAL REVENUE CODE
3 OF 1986, THE REQUIREMENTS OF SECTIONS 106(B) AND (D), 220 AND
4 223 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED TO JANUARY
5 1, 2005, SHALL BE APPLICABLE.

6 (A.7) THE FOLLOWING APPLY:

7 (1) AN AMOUNT PAID AS A CONTRIBUTION INTO A QUALIFIED
8 TUITION PROGRAM SHALL BE DEDUCTIBLE FROM TAXABLE INCOME ON THE
9 ANNUAL PERSONAL INCOME TAX RETURN. THE AMOUNT PAID AS A
10 CONTRIBUTION TO A QUALIFIED TUITION PROGRAM ALLOWABLE AS A
11 DEDUCTION UNDER THIS SUBSECTION SHALL BE SUBJECT TO AN ANNUAL
12 LIMITATION NOT TO EXCEED THE THRESHOLD FOR EXCLUSION FROM GIFTS
13 AS PROVIDED IN SECTION 2503(B) OF THE INTERNAL REVENUE CODE OF
14 1986, AS AMENDED, PER DESIGNATED BENEFICIARY. THE DEDUCTION
15 SHALL NOT RESULT IN TAXABLE INCOME BEING LESS THAN ZERO.

16 (2) (I) THE FOLLOWING SHALL NOT BE SUBJECT TO TAX UNDER
17 THIS ARTICLE:

18 (A) ANY AMOUNT DISTRIBUTED FROM A QUALIFIED TUITION PROGRAM
19 THAT IS EXCLUDABLE FROM TAX UNDER SECTION 529(C)(3)(B) OF THE
20 INTERNAL REVENUE CODE OF 1986, AS AMENDED.

21 (B) ANY ROLLOVER THAT IS EXCLUDABLE FROM TAX UNDER SECTION
22 529(C)(3)(C) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

23 (C) UNDISTRIBUTED EARNINGS ON A QUALIFIED TUITION PROGRAM.

24 (II) A CHANGE IN DESIGNATED BENEFICIARIES UNDER SECTION
25 529(C)(3)(C) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED,
26 SHALL NOT CONSTITUTE A TAXABLE EVENT UNDER THIS ARTICLE.

27 (3) ANY AMOUNT DISTRIBUTED FROM A QUALIFIED TUITION PROGRAM
28 THAT IS NOT DESCRIBED UNDER PARAGRAPH (2) SHALL BE TAXABLE UNDER
29 THIS ARTICLE.

30 (4) FOR PURPOSES OF THIS SUBSECTION:

1 (I) THE TERM "DESIGNATED BENEFICIARY" SHALL HAVE THE SAME
2 MEANING AS PROVIDED IN SECTION 529(E)(1) OF THE INTERNAL REVENUE
3 CODE OF 1986, AS AMENDED.

4 (II) THE TERM "QUALIFIED TUITION PROGRAM" SHALL HAVE THE
5 SAME MEANING AS PROVIDED IN SECTION 529(B)(1) OF THE INTERNAL
6 REVENUE CODE OF 1986, AS AMENDED.

7 * * *

8 SECTION 4. SECTION 307 OF THE ACT, AMENDED MAY 7, 1997
9 (P.L.85, NO.7), IS AMENDED TO READ:

10 SECTION 307. ELECTION BY SMALL CORPORATION.--[EXCEPT AS
11 PROVIDED IN SECTION 307.6, ANY] ANY SMALL CORPORATION [THAT IS
12 SUBJECT TO THE TAX IMPOSED UNDER ARTICLE IV OR OWNS A QUALIFIED
13 S CORPORATION SUBSIDIARY THAT IS SUBJECT TO THE TAX IMPOSED
14 UNDER ARTICLE IV] MAY ELECT NOT TO BE TAXED AS A PENNSYLVANIA S
15 CORPORATION. SUCH ELECTION [SHALL BE VALID ONLY IF ALL THE
16 SHAREHOLDERS] REQUIRES THE CONSENT OF ONE HUNDRED PER CENT OF
17 THE OUTSTANDING SHARES OF THE SMALL CORPORATION ON THE DAY ON
18 WHICH THE ELECTION IS MADE [CONSENT TO THE ELECTION]. A
19 QUALIFIED SUBCHAPTER S SUBSIDIARY OWNED BY A PENNSYLVANIA S
20 CORPORATION SHALL BE TREATED AS A PENNSYLVANIA S CORPORATION
21 WHETHER OR NOT AN ELECTION HAS BEEN MADE WITH RESPECT TO SUCH
22 SUBSIDIARY.

23 SECTION 5. SECTIONS 307.1, 307.3, 307.4, 307.5 AND 307.6 OF
24 THE ACT, ADDED DECEMBER 23, 1983 (P.L.370, NO.90), ARE AMENDED
25 TO READ:

26 SECTION 307.1. MANNER OF MAKING ELECTION.--(A) AN ELECTION
27 MADE PURSUANT TO SECTION 307 SHALL BE MADE IN SUCH MANNER AS
28 PRESCRIBED BY THE DEPARTMENT.

29 (B) AN ELECTION UNDER SECTION 307 MAY BE MADE FOR ANY
30 TAXABLE YEAR AT ANY TIME DURING THE PRECEDING TAXABLE YEAR OR AT

1 ANY TIME ON OR BEFORE THE [FIFTEENTH DAY OF THE THIRD MONTH OF
2 THE CURRENT TAXABLE YEAR] DUE DATE OR EXTENDED DUE DATE OF THE
3 SMALL CORPORATION'S TAX RETURN UNDER ARTICLE IV.

4 SECTION 307.3. REVOCATION OF ELECTION.--(A) AN ELECTION
5 UNDER SECTION 307 MAY BE REVOKED IF SHAREHOLDERS HOLDING MORE
6 THAN ONE-HALF OF THE SHARES OF STOCK OF THE CORPORATION ON THE
7 DAY ON WHICH THE REVOCATION IS MADE CONSENT TO THE REVOCATION.
8 THE CORPORATION AND ANY SUCCESSOR CORPORATION SHALL NOT BE
9 ELIGIBLE TO REVOKE AN ELECTION UNDER THIS SECTION FOR ANY
10 TAXABLE YEAR PRIOR TO ITS FIFTH TAXABLE YEAR WHICH BEGINS AFTER
11 THE FIRST TAXABLE YEAR FOR WHICH AN ELECTION IS EFFECTIVE,
12 UNLESS THE CORPORATION BECOMES A QUALIFIED SUBCHAPTER S
13 SUBSIDIARY.

14 (B) [EXCEPT AS PROVIDED IN SUBSECTION (C), A] A REVOCATION
15 UNDER SUBSECTION (A) SHALL BE EFFECTIVE ON THE FIRST DAY OF THE
16 TAXABLE YEAR IF MADE ON OR BEFORE THE FIFTEENTH DAY OF THE THIRD
17 MONTH THEREOF; IF THE REVOCATION IS MADE AFTER SUCH DATE, IT
18 SHALL BE EFFECTIVE FOR THE FOLLOWING TAXABLE YEAR.

19 [(C) IF THE REVOCATION SPECIFIES A DATE FOR REVOCATION WHICH
20 IS ON OR AFTER THE DAY ON WHICH THE REVOCATION IS MADE, THE
21 REVOCATION SHALL BE EFFECTIVE ON AND AFTER THE DATE SO
22 SPECIFIED.]

23 SECTION 307.4. TERMINATION BY CORPORATION CEASING TO BE A
24 SMALL CORPORATION.--(A) IF A CORPORATION CEASES TO BE A SMALL
25 CORPORATION, AS DEFINED IN SECTION 301(S.2), THE [ELECTION
26 UNDER SECTION 307] CORPORATION'S STATUS AS A PENNSYLVANIA S
27 CORPORATION SHALL TERMINATE.

28 (B) SUCH TERMINATION SHALL BE EFFECTIVE ON THE DATE ON WHICH
29 THE CORPORATION CEASES TO BE A SMALL CORPORATION, AS DEFINED IN
30 SECTION 301(S.2).

1 SECTION 307.5. [REVOCAION OR] TERMINATION YEAR.--(A) THE
2 PORTION OF THE [REVOCAION OR] TERMINATION YEAR OF A
3 PENNSYLVANIA S CORPORATION ENDING BEFORE THE FIRST DAY FOR WHICH
4 THE [REVOCAION OR] TERMINATION IS EFFECTIVE SHALL BE TREATED AS
5 A SHORT TAXABLE YEAR FOR WHICH THE CORPORATION IS A PENNSYLVANIA
6 S CORPORATION.

7 (B) THE PORTION OF SUCH YEAR BEGINNING ON THE FIRST DAY FOR
8 WHICH THE [REVOCAION OR] TERMINATION IS EFFECTIVE SHALL BE
9 TREATED AS A SHORT TAXABLE YEAR FOR [WHICH THE CORPORATION IS
10 SUBJECT TO] PURPOSES OF THE TAX IMPOSED BY ARTICLE IV.

11 (C) THE ALLOCATION OF INCOME AND EXPENSE ITEMS TO BE TAKEN
12 INTO CONSIDERATION IN EACH SHORT YEAR SHALL BE MADE IN
13 ACCORDANCE WITH SUCH REGULATIONS AS MAY BE ISSUED BY THE
14 DEPARTMENT.

15 [SECTION 307.6. ELECTION AFTER REVOCAION OR TERMINATION.--
16 IF A CORPORATION HAS MADE AN ELECTION UNDER SECTION 307 AND IF
17 SUCH ELECTION HAS BEEN REVOKED PURSUANT TO SECTION 307.3 OR
18 TERMINATED, SUCH CORPORATION, AND ANY SUCCESSOR CORPORATION,
19 SHALL NOT BE ELIGIBLE TO MAKE AN ELECTION UNDER SECTION 307 FOR
20 ANY TAXABLE YEAR PRIOR TO ITS FIFTH TAXABLE YEAR WHICH BEGINS
21 AFTER THE FIRST TAXABLE YEAR FOR WHICH SUCH REVOCAION OR
22 TERMINATION IS EFFECTIVE.]

23 SECTION 6. THE DEFINITIONS OF "AVERAGE NET INCOME," "CAPITAL
24 STOCK VALUE" AND "CORPORATION" IN SECTION 601 OF THE ACT,
25 AMENDED MAY 7, 1997 (P.L.85, NO.7) AND JULY 7, 2005 (P.L.149,
26 NO.40), ARE AMENDED TO READ:

27 SECTION 601. DEFINITIONS AND REPORTS.--(A) THE FOLLOWING
28 WORDS, TERMS AND PHRASES WHEN USED IN THIS ARTICLE VI SHALL HAVE
29 THE MEANING ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE
30 CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

1 "AVERAGE NET INCOME." THE SUM OF THE NET INCOME OR LOSS FOR
2 EACH OF THE CURRENT AND IMMEDIATELY PRECEDING FOUR YEARS,
3 DIVIDED BY FIVE. IF THE ENTITY HAS NOT BEEN IN EXISTENCE FOR A
4 PERIOD OF FIVE YEARS, THE AVERAGE NET INCOME SHALL BE THE
5 AVERAGE NET INCOME FOR THE NUMBER OF YEARS THAT THE ENTITY HAS
6 ACTUALLY BEEN IN EXISTENCE. IN COMPUTING AVERAGE NET INCOME,
7 LOSSES SHALL BE ENTERED AS COMPUTED, BUT IN NO CASE SHALL
8 AVERAGE NET INCOME BE LESS THAN ZERO. THE NET INCOME OR LOSS OF
9 THE ENTITY FOR ANY TAXABLE YEAR SHALL BE THE AMOUNT SET FORTH AS
10 INCOME PER BOOKS ON THE INCOME TAX RETURN FILED BY THE ENTITY
11 WITH THE FEDERAL GOVERNMENT FOR SUCH TAXABLE YEAR, OR IF NO SUCH
12 RETURN IS MADE, AS WOULD HAVE BEEN SET FORTH HAD SUCH A RETURN
13 BEEN MADE, SUBJECT, HOWEVER, IN EITHER CASE TO ANY CORRECTION
14 THEREOF, FOR FRAUD, EVASION OR ERROR. IN THE CASE OF ANY ENTITY
15 WHICH HAS AN INVESTMENT IN ANOTHER CORPORATION, THE NET INCOME
16 OR LOSS SHALL BE COMPUTED ON AN UNCONSOLIDATED BASIS EXCLUSIVE
17 OF THE NET INCOME OR LOSS OF SUCH OTHER CORPORATION, WITHOUT
18 REGARD TO HOW THE CORPORATION IS TREATED FOR FEDERAL INCOME TAX
19 PURPOSES. IN THE CASE OF A LIMITED LIABILITY COMPANY OR BUSINESS
20 TRUST THAT IS NOT TAXABLE AS A [PARTNERSHIP] CORPORATION FOR
21 FEDERAL INCOME TAX PURPOSES, THE NET INCOME OR LOSS OF THE
22 LIMITED LIABILITY COMPANY OR BUSINESS TRUST FOR ANY GIVEN YEAR
23 SHALL BE REDUCED BY THE AMOUNT OF DISTRIBUTIONS MADE BY SUCH
24 LIMITED LIABILITY COMPANY OR BUSINESS TRUST TO ANY MEMBER OF
25 SUCH LIMITED LIABILITY COMPANY OR BUSINESS TRUST WHO IS DEEMED
26 TO BE MATERIALLY PARTICIPATING IN THE ACTIVITIES CONDUCTED BY
27 SUCH LIMITED LIABILITY COMPANY OR BUSINESS TRUST FOR PURPOSES OF
28 SECTION 469 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
29 514, 26 U.S.C. § 469). IN THE CASE OF A LIMITED LIABILITY
30 COMPANY OR BUSINESS TRUST THAT FOR FEDERAL INCOME TAX PURPOSES

1 IS A DISREGARDED ENTITY OF A NATURAL PERSON, THE NET INCOME OR
2 LOSS OF THE LIMITED LIABILITY COMPANY OR BUSINESS TRUST FOR ANY
3 GIVEN YEAR SHALL BE REDUCED BY THE AMOUNT OF DISTRIBUTIONS MADE
4 BY THE LIMITED LIABILITY COMPANY OR BUSINESS TRUST TO A NATURAL
5 PERSON. FOR THIS PURPOSE, DISTRIBUTIONS WHICH ARE MADE TO A
6 MEMBER OF A LIMITED LIABILITY COMPANY OR BUSINESS TRUST WITHIN
7 THIRTY (30) DAYS OF THE END OF A GIVEN YEAR MAY BE TREATED AS
8 HAVING BEEN MADE IN THE PRECEDING YEAR AND NOT IN THE YEAR IN
9 WHICH SUCH DISTRIBUTION IS ACTUALLY MADE.

10 * * *

11 "CAPITAL STOCK VALUE." THE AMOUNT COMPUTED PURSUANT TO THE
12 FOLLOWING FORMULA: THE PRODUCT OF ONE-HALF TIMES THE SUM OF THE
13 AVERAGE NET INCOME CAPITALIZED AT THE RATE OF NINE AND ONE-HALF
14 PER CENT PLUS SEVENTY-FIVE PER CENT OF NET WORTH, FROM WHICH
15 PRODUCT SHALL BE SUBTRACTED [ONE HUNDRED TWENTY-FIVE THOUSAND
16 DOLLARS (\$125,000)] ONE HUNDRED FIFTY THOUSAND DOLLARS
17 (\$150,000), THE ALGEBRAIC EQUIVALENT OF WHICH IS

18
$$(.5 \times (\text{AVERAGE NET INCOME} / .095 + (.75)$$

19
$$(\text{NET WORTH})) - [\$125,000] \underline{\$150,000}$$

20 "CORPORATION." (A) ANY OF THE FOLLOWING ENTITIES:

21 (1) A CORPORATION.

22 (2) A JOINT-STOCK ASSOCIATION.

23 (3) A BUSINESS TRUST.

24 (4) A LIMITED LIABILITY COMPANY. THIS CLAUSE EXCLUDES A
25 RESTRICTED PROFESSIONAL COMPANY WHICH IS SUBJECT TO 15 PA.C.S.
26 CH. 89 SUBCH. L (RELATING TO RESTRICTED PROFESSIONAL COMPANIES)
27 [AND WHICH IS DEEMED TO BE A LIMITED PARTNERSHIP PURSUANT TO 15
28 PA.C.S. § 8997 (RELATING TO TAXATION OF RESTRICTED PROFESSIONAL
29 COMPANIES)].

30 (5) AN ENTITY WHICH FOR FEDERAL INCOME TAX PURPOSES IS

1 CLASSIFIED AS A CORPORATION.

2 (6) A BUSINESS TRUST WHICH IS A REAL ESTATE INVESTMENT TRUST
3 AS DEFINED IN SECTION 856 OF THE INTERNAL REVENUE CODE OF 1986
4 (PUBLIC LAW 99-514, 26 U.S.C. § 856) MORE THAN FIFTY PER CENT OF
5 THE VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES
6 OF WHICH ARE OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A
7 SINGLE CORPORATION THAT IS NOT:

8 (I) A REAL ESTATE INVESTMENT TRUST AS DEFINED IN SECTION 856
9 OF THE INTERNAL REVENUE CODE OF 1986;

10 (II) A QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY
11 UNDER SECTION 856(I) OF THE INTERNAL REVENUE CODE OF 1986;

12 (III) A REGULATED FINANCIAL INSTITUTION AS DEFINED BY
13 SECTION 401(6) OF ARTICLE IV; OR

14 (IV) FORMED AS A HOLDING COMPANY, SUBSIDIARY OR AFFILIATE OF
15 A REGULATED FINANCIAL INSTITUTION PRIOR TO DECEMBER 1, 2003.

16 (7) A BUSINESS TRUST WHICH IS A QUALIFIED REAL ESTATE
17 INVESTMENT TRUST SUBSIDIARY UNDER SECTION 856(I) OF THE INTERNAL
18 REVENUE CODE OF 1986 OWNED, DIRECTLY OR INDIRECTLY, BY A REAL
19 ESTATE INVESTMENT TRUST AS DEFINED IN SECTION 856 OF THE
20 INTERNAL REVENUE CODE OF 1986 MORE THAN FIFTY PER CENT OF THE
21 VOTING POWER OR VALUE OF THE BENEFICIAL INTERESTS OR SHARES OF
22 WHICH ARE OWNED OR CONTROLLED, DIRECTLY OR INDIRECTLY, BY A
23 SINGLE CORPORATION THAT IS NOT:

24 (I) A REAL ESTATE INVESTMENT TRUST AS DEFINED IN SECTION 856
25 OF THE INTERNAL REVENUE CODE OF 1986;

26 (II) A QUALIFIED REAL ESTATE INVESTMENT TRUST SUBSIDIARY
27 UNDER SECTION 856(I) OF THE INTERNAL REVENUE CODE OF 1986;

28 (III) A REGULATED FINANCIAL INSTITUTION AS DEFINED BY
29 SECTION 401(6) OF ARTICLE IV; OR

30 (IV) FORMED AS A HOLDING COMPANY, SUBSIDIARY OR AFFILIATE OF

1 A REGULATED FINANCIAL INSTITUTION PRIOR TO DECEMBER 1, 2003.

2 (B) THE TERM DOES NOT INCLUDE ANY OF THE FOLLOWING:

3 (1) A BUSINESS TRUST WHICH QUALIFIES AS A REAL ESTATE
4 INVESTMENT TRUST UNDER SECTION 856 OF THE INTERNAL REVENUE CODE
5 OF 1986 (26 U.S.C. § 856) OR WHICH IS A QUALIFIED REAL ESTATE
6 INVESTMENT TRUST SUBSIDIARY UNDER SECTION 856(I) OF THE INTERNAL
7 REVENUE CODE OF 1986 (26 U.S.C. § 856(I)).

8 (2) A BUSINESS TRUST WHICH QUALIFIES AS A REGULATED
9 INVESTMENT COMPANY UNDER SECTION 851 OF THE INTERNAL REVENUE
10 CODE OF 1986 (26 U.S.C. § 851) AND WHICH IS REGISTERED WITH THE
11 UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER THE
12 INVESTMENT COMPANY ACT OF 1940 (54 STAT. 789, 15 U.S.C. § 80A-1
13 ET SEQ.) OR A RELATED BUSINESS TRUST WHICH CONFINES ITS
14 ACTIVITIES IN THIS COMMONWEALTH TO THE MAINTENANCE,
15 ADMINISTRATION AND MANAGEMENT OF INTANGIBLE INVESTMENTS AND
16 ACTIVITIES OF REGULATED INVESTMENT COMPANIES.

17 (3) A CORPORATION, TRUST OR OTHER ENTITY WHICH IS AN EXEMPT
18 ORGANIZATION AS DEFINED BY SECTION 501 OF THE INTERNAL REVENUE
19 CODE OF 1986 (26 U.S.C. § 501).

20 (4) A CORPORATION, TRUST OR OTHER ENTITY ORGANIZED AS A NOT-
21 FOR-PROFIT ORGANIZATION UNDER THE LAWS OF THIS COMMONWEALTH OR
22 THE LAWS OF ANY OTHER STATE WHICH:

23 (I) WOULD QUALIFY AS AN EXEMPT ORGANIZATION AS DEFINED BY
24 SECTION 501 OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. §
25 501);

26 (II) WOULD QUALIFY AS A HOMEOWNERS ASSOCIATION AS DEFINED BY
27 SECTION 528(C) OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. §
28 528(C));

29 (III) IS A MEMBERSHIP ORGANIZATION SUBJECT TO THE FEDERAL
30 LIMITATIONS ON DEDUCTIONS FROM TAXABLE INCOME UNDER SECTION 277

1 OF THE INTERNAL REVENUE CODE OF 1986 (26 U.S.C. § 277) BUT ONLY
2 IF NO PECUNIARY GAIN OR PROFIT INURES TO ANY MEMBER OR RELATED
3 ENTITY FROM THE MEMBERSHIP ORGANIZATION; OR

4 (IV) IS A NONSTOCK COMMODITY OR A NONSTOCK STOCK EXCHANGE.

5 (5) A COOPERATIVE AGRICULTURAL ASSOCIATION SUBJECT TO 15
6 PA.C.S. CH. 75 (RELATING TO COOPERATIVE AGRICULTURAL
7 ASSOCIATIONS).

8 (6) A BUSINESS TRUST IF THE TRUST IS ALL OF THE FOLLOWING:

9 (I) CREATED OR MANAGED BY AN ENTITY WHICH IS SUBJECT TO THE
10 TAX IMPOSED BY ARTICLE VII OR XV OR WHICH IS AN AFFILIATE OF THE
11 ENTITY WHICH SHARES AT LEAST EIGHTY PER CENT COMMON OWNERSHIP.

12 (II) CREATED AND MANAGED FOR THE PURPOSE OF FACILITATING THE
13 SECURITIZATION OF INTANGIBLE ASSETS.

14 (III) CLASSIFIED AS A PARTNERSHIP OR A DISREGARDED ENTITY
15 FOR FEDERAL INCOME TAX PURPOSES.

16 * * *

17 SECTION 7. SECTION 602(H) OF THE ACT, AMENDED DECEMBER 23,
18 2003 (P.L.250, NO.46), IS AMENDED TO READ:

19 SECTION 602. IMPOSITION OF TAX.--* * *

20 (H) THE RATE OF TAX FOR PURPOSES OF THE CAPITAL STOCK AND
21 FRANCHISE TAX FOR TAXABLE YEARS BEGINNING WITHIN THE DATES SET
22 FORTH SHALL BE AS FOLLOWS:

23 TAXABLE YEAR	REGULAR RATE	SURTAX	TOTAL RATE
24 JANUARY 1, 1971, TO			
25 DECEMBER 31, 1986	10 MILLS	0	10 MILLS
26 JANUARY 1, 1987, TO			
27 DECEMBER 31, 1987	9 MILLS	0	9 MILLS
28 JANUARY 1, 1988, TO			
29 DECEMBER 31, 1990	9.5 MILLS	0	9.5 MILLS
30 JANUARY 1, 1991, TO			

1	DECEMBER 31, 1991	11 MILLS	2 MILLS	13 MILLS
2	JANUARY 1, 1992, TO			
3	DECEMBER 31, 1997	11 MILLS	1.75 MILLS	12.75 MILLS
4	JANUARY 1, 1998, TO			
5	DECEMBER 31, 1998	11 MILLS	.99 MILLS	11.99 MILLS
6	JANUARY 1, 1999, TO			
7	DECEMBER 31, 1999	10.99 MILLS	0	10.99 MILLS
8	JANUARY 1, 2000, TO			
9	DECEMBER 31, 2000	8.99 MILLS	0	8.99 MILLS
10	JANUARY 1, 2001, TO			
11	DECEMBER 31, 2001	7.49 MILLS	0	7.49 MILLS
12	JANUARY 1, 2002, TO			
13	DECEMBER 31, 2003	7.24 MILLS	0	7.24 MILLS
14	JANUARY 1, 2004, TO			
15	DECEMBER 31, 2004	6.99 MILLS	0	6.99 MILLS
16	JANUARY 1, 2005, TO			
17	DECEMBER 31, 2005	5.99 MILLS	0	5.99 MILLS
18	[JANUARY 1, 2006, TO			
19	DECEMBER 31, 2006	4.99 MILLS	0	4.99 MILLS
20	JANUARY 1, 2007, TO			
21	DECEMBER 31, 2007	3.99 MILLS	0	3.99 MILLS
22	JANUARY 1, 2008, TO			
23	DECEMBER 31, 2008	2.99 MILLS	0	2.99 MILLS
24	JANUARY 1, 2009, TO			
25	DECEMBER 31, 2009	1.99 MILLS	0	1.99 MILLS
26	JANUARY 1, 2010, TO			
27	DECEMBER 31, 2010	.99 MILLS	0	.99 MILLS]
28	<u>JANUARY 1, 2006, TO</u>			
29	<u>DECEMBER 31, 2006</u>	<u>4.89 MILLS</u>	<u>0</u>	<u>4.89 MILLS</u>
30	<u>JANUARY 1, 2007, TO</u>			

1	<u>DECEMBER 31, 2007</u>	<u>3.89 MILLS</u>	<u>0</u>	<u>3.89 MILLS</u>
2	<u>JANUARY 1, 2008, TO</u>			
3	<u>DECEMBER 31, 2008</u>	<u>2.89 MILLS</u>	<u>0</u>	<u>2.89 MILLS</u>
4	<u>JANUARY 1, 2009, TO</u>			
5	<u>DECEMBER 31, 2009</u>	<u>1.89 MILLS</u>	<u>0</u>	<u>1.89 MILLS</u>
6	<u>JANUARY 1, 2010, TO</u>			
7	<u>DECEMBER 31, 2010</u>	<u>.89 MILLS</u>	<u>0</u>	<u>.89 MILLS</u>

8 * * *

9 SECTION 8. SECTION 1106-C OF THE ACT, AMENDED JUNE 29, 2002,
10 (P.L.559, NO.89), IS AMENDED TO READ:

11 SECTION 1106-C. STAMPS, COMMISSIONS, PAYMENTS AND
12 TRANSFERS.--(A) THE DEPARTMENT SHALL PRESCRIBE, PREPARE AND
13 FURNISH STAMPS TO EACH RECORDER OF DEEDS, OF SUCH DENOMINATIONS
14 AND QUANTITIES AS MAY BE NECESSARY, FOR THE PAYMENT OF THE TAX
15 IMPOSED AND ASSESSED BY THIS ARTICLE.

16 (B) THE DEPARTMENT SHALL ALLOW EACH COUNTY A COMMISSION EQUAL
17 TO ONE PER CENT OF THE FACE VALUE OF THE STAMPS SOLD OR TWO
18 HUNDRED FIFTY DOLLARS (\$250) WHICHEVER IS GREATER. THE RECORDER
19 OF DEEDS SHALL PAY THE COMMISSION HEREIN ALLOWED TO THE GENERAL
20 FUND OF THE COUNTY. THE DEPARTMENT SHALL PAY THE PREMIUM OR
21 PREMIUMS ON ANY BOND OR BONDS REQUIRED BY LAW TO BE PROCURED BY
22 RECORDER OF DEEDS FOR THE PERFORMANCE OF THEIR DUTIES UNDER THIS
23 ARTICLE.

24 (C) ALL MONEYS PAID IN ACCORDANCE WITH THIS ARTICLE SHALL BE
25 CREDITED TO THE GENERAL FUND.

26 (D) AT THE END OF EACH MONTH, THE STATE TREASURER SHALL
27 TRANSFER FROM THE GENERAL FUND TO THE KEYSTONE RECREATION, PARK
28 AND CONSERVATION FUND AN AMOUNT EQUAL TO THE TAX CREDITED TO THE
29 GENERAL FUND UNDER SUBSECTION (C) FOR THE PREVIOUS MONTH
30 MULTIPLIED BY THE APPLICABLE TRANSFER FACTOR. THE APPLICABLE

1 TRANSFER FACTOR FOR EACH MONTH SHALL BE AS FOLLOWS:

2	MONTH	TRANSFER FACTOR
3	JULY 1994 THROUGH	
4	DECEMBER 2001	0.15
5	JANUARY 2002 THROUGH	
6	JUNE 2002	0.10
7	JULY 2002 THROUGH	
8	JUNE 2003	0.075
9	JULY 2003 [AND EACH	
10	MONTH THEREAFTER] <u>THROUGH</u>	
11	<u>JUNE 2006</u>	0.15
12	<u>JULY 2006 THROUGH</u>	
13	<u>JUNE 2007</u>	<u>0.021</u>
14	<u>JULY 2007 AND EACH</u>	
15	<u>MONTH THEREAFTER</u>	<u>0.15</u>

16 [THE STATE TREASURER SHALL TRANSFER FROM THE KEYSTONE
17 RECREATION, PARK AND CONSERVATION FUND TO THE GENERAL FUND AN
18 AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE AMOUNT TRANSFERRED TO
19 THE KEYSTONE RECREATION, PARK AND CONSERVATION FUND FROM JANUARY
20 1, 2002, AND THE EFFECTIVE DATE OF THIS SUBSECTION AND THE
21 AMOUNT AUTHORIZED BY THIS SUBSECTION.]

22 SECTION 9. SECTION 2122(A) OF THE ACT IS AMENDED BY ADDING A
23 DEFINITION AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
24 READ:

25 SECTION 2122. VALUATION OF CERTAIN FARMLAND.--(A) THE
26 FOLLOWING WORDS AND PHRASES, WHEN USED IN THIS SECTION, SHALL
27 HAVE THE MEANING ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE
28 THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

29 * * *

30 "AGRICULTURAL CONSERVATION EASEMENT." AS DEFINED IN SECTION

1 3 OF THE ACT OF JUNE 30, 1981 (P.L.128, NO.43), KNOWN AS THE
2 "AGRICULTURAL AREA SECURITY LAW."

3 * * *

4 (E) THE VALUE FOR TRANSFER INHERITANCE TAX PURPOSES OF LAND
5 OR AN INTEREST IN LAND WHICH IS PART OF AN AGRICULTURAL
6 CONSERVATION EASEMENT SHALL BE AT FIFTY PER CENT OF THE VALUE
7 OTHERWISE DETERMINED UNDER THIS SECTION.

8 SECTION 10. REPEALS ARE AS FOLLOWS:

9 (1) THE PROVISIONS OF 15 PA.C.S. § 8997(B)(2) ARE
10 REPEALED.

11 (2) THE GENERAL ASSEMBLY DECLARES THAT THE FOLLOWING
12 REPEALS ARE NECESSARY TO EFFECTUATE THE AMENDMENT OF SECTION
13 303 OF THE ACT:

14 (I) SECTIONS 2 AND 3 OF THE ACT OF DECEMBER 19, 1996
15 (P.L.1335, NO.179), KNOWN AS THE MEDICAL CARE SAVINGS
16 ACCOUNT ACT, ARE REPEALED.

17 (II) SECTION 4 OF THE ACT OF JULY 14, 2005 (P.L.278,
18 NO.48), KNOWN AS THE HEALTH SAVINGS ACCOUNT ACT, IS
19 REPEALED.

20 SECTION 11. THIS ACT SHALL APPLY AS FOLLOWS:

21 (1) THE FOLLOWING PROVISIONS SHALL APPLY TO TAXABLE
22 YEARS BEGINNING AFTER DECEMBER 31, 2005:

23 (I) THE AMENDMENT OF SECTION 301(N.1), (O.3) AND
24 (S.2) OF THE ACT.

25 (II) THE AMENDMENT OR ADDITION OF SECTION 303(A)(6),
26 (A.6) AND (A.7) OF THE ACT.

27 (III) THE AMENDMENT OF SECTION 307 OF THE ACT.

28 (IV) THE AMENDMENT OF SECTION 307.1 OF THE ACT.

29 (V) THE AMENDMENT OF SECTION 307.3 OF THE ACT.

30 (VI) THE AMENDMENT OF SECTION 307.4 OF THE ACT.

1 (VII) THE AMENDMENT OF SECTION 307.5 OF THE ACT.

2 (VIII) THE AMENDMENT OF SECTION 307.6 OF THE ACT.

3 (IX) THE AMENDMENT OF THE DEFINITIONS OF "AVERAGE
4 NET INCOME" AND "CORPORATION" IN SECTION 601 OF THE ACT.

5 (X) THE AMENDMENT OF SECTION 602(H) OF THE ACT.

6 (2) THE AMENDMENT OF THE DEFINITION OF "CAPITAL STOCK
7 VALUE" IN SECTION 601 OF THE ACT SHALL APPLY TO TAXABLE YEARS
8 BEGINNING AFTER DECEMBER 31, 2006.

9 (3) THE AMENDMENT OR ADDITION OF SECTION 2122(A) AND (E)
10 OF THE ACT SHALL APPLY TO ESTATES OF DECEDENTS WHO DIE ON OR
11 AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH.

12 SECTION 12. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

13 (1) THE ADDITION OF SECTION 204(65) OF THE ACT SHALL
14 TAKE EFFECT IN 60 DAYS.

15 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JULY 1,
16 2006, OR IMMEDIATELY, WHICHEVER IS LATER.