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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1412** Session of  
2008

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INTRODUCED BY PIPPY, A. WILLIAMS, PUNT, PILEGGI, O'PAKE, HUGHES,  
RAFFERTY, KITCHEN, GORDNER, ORIE, COSTA, D. WHITE, ERICKSON,  
ROBBINS, C. WILLIAMS AND REGOLA, MAY 14, 2008

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 30, 2008

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AN ACT

1 Amending the act of October 6, 1998 (P.L.705, No.92), entitled,  
2 as amended, "An act providing for the creation of keystone  
3 opportunity zones and keystone opportunity expansion zones to  
4 foster economic opportunities in this Commonwealth, to  
5 facilitate economic development, stimulate industrial,  
6 commercial and residential improvements and prevent physical  
7 and infrastructure deterioration of geographic areas within  
8 this Commonwealth; authorizing expenditures; providing tax  
9 exemptions, tax deductions, tax abatements and tax credits;  
10 creating additional obligations of the Commonwealth and local  
11 governmental units; and prescribing powers and duties of  
12 certain State and local departments, agencies and officials,"  
13 defining "unoccupied parcel"; providing for extensions for  
14 unoccupied parcels, for additional keystone opportunity  
15 expansion zones, for substitution of parcels outside a  
16 subzone and for payments; prohibiting illegal alien labor in  
17 zones; and further providing for sales and use tax, for  
18 corporate net income tax and for local earned income net  
19 profits taxes, local sales and use tax and business privilege  
20 taxes.

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

23 Section 1. Section 103 of the act of October 6, 1998  
24 (P.L.705, No.92), known as the Keystone Opportunity Zone,  
25 Keystone Opportunity Expansion Zone and Keystone Opportunity

1 Improvement Zone Act, is amended by adding a definition to read:  
2 Section 103. Definitions.

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

6 \* \* \*

7 "Unoccupied parcel." A parcel that is not occupied on the  
8 effective date of this definition. Construction activity on a  
9 parcel shall not constitute occupation of the parcel.

10 Section 2. The act is amended by adding sections to read:  
11 Section 301.3. Extension for unoccupied parcels.

12 (a) Extension.--The department may approve an application to  
13 extend the exemptions, deductions, abatements and credits under  
14 this act as follows:

15 (1) One of the following:

16 (i) For a parcel in a keystone opportunity zone,  
17 keystone opportunity expansion zone or keystone  
18 opportunity improvement zone that is an unoccupied parcel  
19 on the effective date of this section, for a period of  
20 seven years from the expiration date of the zone.

21 (ii) For a parcel in a keystone opportunity zone or  
22 keystone opportunity expansion zone that is an unoccupied  
23 parcel on the effective date of this section, for a  
24 period of ten years from the date of occupancy, provided  
25 that the parcel is occupied on or before December 31,  
26 2015.

27 (2) The extension of exemptions, deductions, abatements  
28 or credits authorized under this section, except exemptions  
29 for sales and use tax under section 511(a) or 705(a), shall  
30 take effect only upon occupancy.

1       (b) Real estate tax abatement.--The owner of an unoccupied  
2 parcel in a keystone opportunity zone, keystone opportunity  
3 expansion zone or keystone opportunity improvement zone that has  
4 expired but that receives an extension of tax abatement  
5 eligibility following the original expiration date of the  
6 keystone opportunity zone, keystone opportunity expansion zone  
7 or keystone opportunity improvement zone under subsection (a)  
8 shall not receive an abatement of real property tax until the  
9 parcel becomes occupied or developed.

10       (c) Application.--Except as provided in subsection (d), in  
11 order to extend the tax benefits for unoccupied parcels under  
12 subsection (a), the department must receive an application from  
13 a political subdivision or its designee no later than June 30,  
14 2009. The application must contain the information required  
15 under section 302(a)(1), (2), (3), (5) and (6). The application  
16 must include all ordinances, resolutions or other required  
17 action adopted by all political subdivisions in which the  
18 unoccupied parcel is located adopting the extension of all tax  
19 exemptions, deductions, abatements and credits authorized under  
20 Chapter 7. The department, in consultation with the Department  
21 of Revenue, shall review the application and, if approved, issue  
22 a certification of all tax exemptions, deductions, abatements or  
23 credits under this part for the unoccupied parcel within three  
24 months of receipt of the application. The certification shall be  
25 effective on the day following the expiration date of the  
26 existing subzone.

27       ~~(c.1) Application for licensed facilities within cities of~~       <—  
28 ~~first class. No person shall be eligible to apply for any tax~~  
29 ~~exemption, deduction, abatement, credit or other tax benefit~~  
30 ~~under this act or the act of December 1, 1977 (P.L.237, No.76),~~

1 ~~known as the Local Economic Revitalization Tax Assistance Act,~~  
2 ~~for any parcel within a city of the first class that is~~  
3 ~~contiguous with a navigable waterway, if the parcel is to be~~  
4 ~~used in whole or in part for a licensed facility as defined in 4~~  
5 ~~Pa.C.S. § 1103 (relating to definitions) unless the following~~  
6 ~~conditions have been satisfied:~~

7 ~~(1) the applicant has obtained an easement, right of-~~  
8 ~~way, license or lease pursuant to an act of the General~~  
9 ~~Assembly, enacted following the effective date of this~~  
10 ~~subsection, for the use, occupancy or development of the~~  
11 ~~contiguous submerged lands; and~~

12 ~~(2) the applicant has made payment to the Commonwealth~~  
13 ~~for the use, occupancy or development of the contiguous~~  
14 ~~submerged lands in an amount established by the General~~  
15 ~~Assembly.~~

16 ~~(d) Applications for certain zones.--For a keystone~~  
17 ~~opportunity zone that expires December 31, 2008, an application~~  
18 ~~may be submitted to the department to temporarily delay the~~  
19 ~~expiration of the exemptions, deductions, abatements and credits~~  
20 ~~for the zone until June 30, 2009. The application must be~~  
21 ~~submitted by November 30, 2008, and include all ordinances,~~  
22 ~~resolutions or other required action from all affected political~~  
23 ~~subdivisions approving the requested delay in the expiration of~~  
24 ~~the keystone opportunity zone. The department shall certify the~~  
25 ~~delay in the expiration by December 31, 2008. If the expiration~~  
26 ~~of a keystone opportunity zone is delayed under this subsection,~~  
27 ~~a political subdivision or its designee may apply for an~~  
28 ~~extension pursuant to subsection (c), provided that the~~  
29 ~~application shall be submitted by May 1, 2009, and approved by~~  
30 ~~the department no later than June 30, 2009. If an extension is~~

1 granted under subsection (c), the extension shall be deemed to  
2 be effective January 1, 2009.

3 (e) Expiration.--All extensions of an unoccupied parcel  
4 certified under subsection (a)(1)(i) shall expire no later than  
5 seven years following the expiration date of the existing  
6 keystone opportunity zone, keystone opportunity expansion zone  
7 or keystone opportunity improvement zone. All extensions of an  
8 unoccupied parcel certified under subsection (a)(1)(ii) shall  
9 expire no later than ten years following the date of occupancy  
10 of the unoccupied parcel.

11 Section 301.4. Additional keystone opportunity expansion zones.

12 (a) Establishment.--

13 (1) In addition to any designations under section 301.1,  
14 the department may designate up to 15 additional keystone  
15 opportunity expansion zones in accordance with this section.  
16 Each additional keystone opportunity expansion zone shall:

17 (i) Not be less than ten acres in size, unless  
18 contiguous to an existing zone.

19 (ii) Not exceed, in the aggregate, a total of 350  
20 acres.

21 (iii) Be comprised of parcels that meet any of the  
22 following criteria:

23 (A) Are deteriorated, underutilized or  
24 unoccupied on the effective date of this clause.

25 (B) Are occupied by a business that:

26 (I) Creates or retains at least 1,400 full-  
27 time jobs in this Commonwealth within three years  
28 of the designation of the keystone opportunity  
29 expansion zone; and

30 (II) Makes a capital investment of at least

1                   \$750,000,000 in the additional keystone  
2                   opportunity enhancement zone within three years  
3                   of the designation of the keystone opportunity  
4                   expansion zone.

5           (2) The department shall immediately notify political  
6           subdivisions located within the area designated.

7           (b) Authorization.--Persons and businesses within an  
8           additional keystone opportunity expansion zone authorized under  
9           subsection (a) shall be entitled to all tax exemptions,  
10           deductions, abatements or credits set forth under this act,  
11           except exemptions for sales and use tax under section 511(a) or  
12           705(a), for a period of ten years beginning January 1, 2010 and  
13           ending on December 31, 2020. Exemptions for sales and use taxes  
14           under sections 511 and 705 shall commence upon designation of  
15           the zone by the department.

16           (c) Application.--In order to receive a designation under  
17           subsection (a), the department must receive an application from  
18           a political subdivision or its designee no later than May 1,  
19           2009. The application must contain the information required  
20           under section 302(a)(1), (2)(i) and (ix) and (6). The  
21           application must include all ordinances, resolutions or other  
22           required action adopted by all political subdivisions in which  
23           the keystone opportunity expansion zone is located providing the  
24           tax exemptions, deductions, abatements and credits authorized  
25           under Chapter 7. The department, in consultation with the  
26           Department of Revenue, shall review the application and, if  
27           approved, issue a certification of all tax exemptions,  
28           deductions, abatements or credits under this part for the  
29           additional keystone opportunity expansion zone within three  
30           months of receipt of the application. The department shall act

1 on an application under this subsection by June 30, 2009.

2 ~~(d) Prohibition. The department shall be prohibited from~~ <—  
3 ~~designating any parcel of land within a city of the first class~~  
4 ~~as a keystone opportunity zone, keystone opportunity expansion~~  
5 ~~zone, keystone opportunity improvement zone or a keystone~~  
6 ~~opportunity innovation zone if any project involving a parcel,~~  
7 ~~within a 1,001 foot radius as measured from the center of the~~  
8 ~~proposed parcel to be designated, has received or has been~~  
9 ~~designated to receive in excess of \$20,000,000 in funding from~~  
10 ~~the Commonwealth within the last four years. The department~~  
11 ~~shall be prohibited from providing any State financial~~  
12 ~~assistance, including loans, grants or any tax abatements,~~  
13 ~~credits, deductions or exemptions provided under this act or any~~  
14 ~~other State law to a parcel located within the area described in~~  
15 ~~this subsection nor shall the department or the governing body~~  
16 ~~of the city of the first class provide any tax exemption,~~  
17 ~~deduction, abatement, credit or other tax benefit under the act~~  
18 ~~of December 1, 1977 (P.L.237, No.76), known as the Local~~  
19 ~~Economic Revitalization Tax Assistance Act, for any project~~  
20 ~~involving a parcel located within the area described in this~~  
21 ~~subsection.~~

22 Section 301.5. Expansion for new parcels.

23 (a) Expansion.--A political subdivision or its designee may  
24 apply for an expansion to add up to 15 acres of deteriorated  
25 property to an existing keystone opportunity expansion zone,  
26 keystone opportunity improvement zone or a subzone of a keystone  
27 opportunity zone for parcels that are contiguous to the existing  
28 zone or subzone.

29 (b) Application.--In order to receive a designation under  
30 this section, the department must receive an application from a

1 political subdivision or its designee no later than December 31,  
2 2008. The application must contain the information required  
3 under section 302(a)(1), (2)(i) and (ix), (5) and (6). The  
4 application must include all ordinances, resolutions or other  
5 required action adopted by all political subdivisions in which  
6 the keystone opportunity expansion zone, keystone opportunity  
7 improvement zone or a subzone of a keystone opportunity zone is  
8 located adopting all tax exemptions, deductions, abatements and  
9 credits authorized under Chapter 7 to the expanded area. The  
10 department, in consultation with the Department of Revenue,  
11 shall review the application and, if approved, issue a  
12 certification of all tax exemptions, deductions, abatements or  
13 credits under this act for the expansion authorized under  
14 subsection (a) within two months of the receipt of the  
15 application.

16 (c) Applications for certain zones.--For a keystone  
17 opportunity zone that expires December 31, 2008, but is seeking  
18 an extension under section 301.3, the application shall include  
19 the request for an expansion under subsection (a). The  
20 application must be submitted by December 31, 2008, and include  
21 all ordinances, resolutions or other required action from all  
22 affected political subdivisions approving the addition of the  
23 acreage. If the expiration of a keystone opportunity zone is  
24 delayed under this subsection, a political subdivision or its  
25 designee may apply for an extension under 301.3 and an expansion  
26 under this section. If an extension is granted under section  
27 301.3, the extension and the expansion shall be deemed to be  
28 effective January 1, 2009.

29 (d) Authorization.--Persons or businesses within the  
30 expanded area shall be entitled to all tax exemptions,



1 deductions, abatements or credits set forth under this part,  
2 except for sales and use taxes under section 511(a) or 705(a),  
3 for the period set forth in subsection (e). Exemptions for sales  
4 and use taxes under sections 511 and 705 shall commence upon  
5 approval of the expansion by the department.

6 (e) Expiration.--All expansions under this section shall  
7 expire on the same date as the keystone opportunity expansion  
8 zone, keystone opportunity improvement zone or subzone of a  
9 keystone opportunity zone.

10 Section 301.6. Substitution of parcels outside a subzone.

11 (a) Approval.--If a portion of an existing subzone is  
12 affected by a governmental prohibition of an environmental  
13 nature which has a substantial adverse effect on development,  
14 the department may approve a substitution of other parcels for  
15 those affected acres in the existing subzone, creating a new  
16 subzone if the new subzone is substantially similar in acreage  
17 size and is within five miles and in the same county as the  
18 original subzone.

19 (b) Application and approval.--Applications to substitute  
20 parcels under this section shall be made to the department no  
21 later than May 31, 2009. Applications under this section shall  
22 be made to the department in accordance with section 302(a)(1),  
23 (2), (3), (5) and (6). The department shall certify the  
24 substitutions by June 30, 2009.

25 Section 310. Payments.

26 The following shall apply to an agreement between a business  
27 and a political subdivision entered into after the effective  
28 date of this section in exchange for the approval of, or  
29 otherwise relating to, the establishment of a keystone  
30 opportunity zone, keystone opportunity expansion zone or

1 keystone opportunity improvement zone under this act, to include  
2 an extension under section 301.2:

3 (1) Except as otherwise required or authorized by law, a  
4 business may not provide payments to a political subdivision  
5 in exchange for the approval of, or otherwise relating to,  
6 the designation or extension of a keystone opportunity zone,  
7 keystone opportunity expansion zone or keystone opportunity  
8 improvement zone in excess of 110% of the amount of real  
9 property taxes payable to the political subdivision for the  
10 tax year immediately prior to the year in which the  
11 designation or extension is granted. The limitation on  
12 payments set forth under this paragraph may increase by the  
13 percentage increase in the payments that would occur if the  
14 property was not exempt from local real property taxes.

15 (2) Except as provided under paragraph (3), payments  
16 made under paragraph (1) may be increased based on a taxpayer  
17 assessment appeal or as necessary to correct any errors or  
18 omissions in the county's assessment records. Payments may be  
19 increased following a county-wide reassessment based on  
20 improvements to the property made prior to the approval of  
21 the designation or expansion.

22 (3) Payments may not be increased for the duration of  
23 the designation or expansion based on an increase in the  
24 assessed value of property due to improvements to the  
25 property made subsequent to designation.

26 (4) Any agreement to make payments under this section  
27 shall be in writing and approved by a majority vote of the  
28 governing body of the political subdivision at a meeting that  
29 is subject to 65 Pa.C.S. Ch. 7 (relating to open meetings).

30 Section 311. Prohibition on illegal alien labor.

1       (a) General rule.--No person or business that receives a tax  
2 exemption, deduction, abatement or credit under this act shall  
3 knowingly permit the labor services of an illegal alien under a  
4 contract to which the person or business is a party in the  
5 applicable keystone opportunity zone, keystone opportunity  
6 expansion zone or keystone opportunity improvement zone. A  
7 person shall be deemed to have knowingly employed or knowingly  
8 permitted the prohibited services if he shall have active  
9 knowledge of or have reason to know that such services have been  
10 provided under the contract in the applicable keystone  
11 opportunity zone, keystone opportunity expansion zone or  
12 keystone opportunity improvement zone.

13       (b) Reimbursement.--As a condition of the receipt of a tax  
14 exemption, deduction, abatement or credit under this act, the  
15 department or political subdivision that awards the tax  
16 exemption, deduction, abatement of credit under this act shall  
17 require full repayment of the value or amount of the tax  
18 exemption, deduction, abatement or credit if subsection (c)  
19 applies.

20       (c) Violations.--

21           (1) Repayment under subsection (b) is required if any of  
22 the following apply:

23               (i) The person or business that received the tax  
24 exemption, deduction, abatement or credit under this act  
25 is sentenced under Federal law for an offense involving  
26 knowing use of labor by an illegal alien under the  
27 contract in the applicable keystone opportunity zone,  
28 keystone opportunity expansion zone or keystone  
29 improvement zone.

30               (ii) All of the following apply:

1           (A) A contractor to a person or business that  
2           received the tax exemption, deduction, abatement or  
3           credit under this act is sentenced under Federal law  
4           for an offense involving knowing use of labor by an  
5           illegal alien on the contract.

6           (B) The person knew or had reason to know of the  
7           contractor's knowing use of labor by an illegal alien  
8           on the contract.

9           (2) Any person who is required to repay the department  
10          or political subdivision under this section shall be  
11          ineligible to apply for any tax exemption, deduction,  
12          abatement or credit under this act for a period of two years.

13          (3) It shall be an affirmative defense to a violation of  
14          this section, if the person or business contracts with a  
15          contractor to provide labor under the contract in the  
16          applicable keystone opportunity zone, keystone opportunity  
17          expansion zone or keystone opportunity improvement zone and  
18          establishes that the person has required the contractor to  
19          certify compliance with the requirements of section 274A of  
20          the Immigration Reform and Control Act of 1986 (Public Law  
21          99-603, 8 U.S.C. § 1324A) with respect to the hiring,  
22          recruiting or referral for employment of an alien in the  
23          United States and has notified the appropriate Federal  
24          authority, if the person knew that the contractor used labor  
25          by an illegal alien.

26          (d) Definition.--As used in this section, "illegal alien"  
27          means a noncitizen of the United States who is violating Federal  
28          immigration laws and is providing compensated labor within this  
29          Commonwealth.

30          Section 3. Section 511 of the act, amended December 9, 2002

1 (P.L.1727, No.217), is amended to read:

2 Section 511. Sales and use tax.

3 (a) Exemption.--Sales at retail of services or tangible  
4 personal property, other than motor vehicles, to a qualified  
5 business or a construction contractor pursuant to a construction  
6 contract with a qualified business, landowner or lessee for the  
7 exclusive use, consumption and utilization of the tangible  
8 personal property or service by the qualified business at [its]  
9 the qualified business's, landowner's or lessee's facility  
10 located within a subzone, improvement subzone or expansion  
11 subzone are exempt from the sales and use tax imposed under  
12 Article II of the Tax Reform Code of 1971. No person shall be  
13 allowed an exemption for sales conducted prior to designation of  
14 the real property as part of a subzone or expansion subzone.

15 [(b) Construction contracts.--For any construction contract  
16 performed in a subzone, improvement subzone or expansion  
17 subzone, the exemption provided in subsection (a) shall only  
18 apply to the sale at retail or use of building machinery and  
19 equipment to a qualified business, or to a construction  
20 contractor pursuant to a construction contract with a qualified  
21 business, for the exclusive use, consumption and utilization by  
22 the qualified business at its facility in a subzone, improvement  
23 subzone or expansion subzone. For the purposes of the subzone,  
24 improvement subzone or expansion subzone exemption, building  
25 machinery and equipment shall include distribution equipment  
26 purchased for the exclusive use, consumption and utilization in  
27 a subzone, improvement subzone or expansion subzone facility.]

28 Section 4. Section 515(d) introductory paragraph and (3) of  
29 the act, amended December 23, 2003 (P.L.360, No.51), are amended  
30 to read:

1 Section 515. Corporate net income tax.

2 \* \* \*

3 (d) Income apportionment.--The taxable income of a  
4 corporation that is a qualified business shall be apportioned to  
5 the subzone, improvement subzone or expansion subzone by  
6 multiplying the Pennsylvania taxable income by a fraction, the  
7 numerator of which is the property factor plus the payroll  
8 factor [plus the sales factor] and the denominator of which is  
9 [three] two, in accordance with the following:

10 \* \* \*

11 [(3) The sales factor is a fraction, the numerator of  
12 which is the total sales of the taxpayer in the subzone,  
13 improvement subzone or expansion subzone during the tax  
14 period and the denominator of which is the total sales of the  
15 taxpayer in this Commonwealth during the tax period.

16 (i) Sales of tangible personal property are in the  
17 subzone, improvement subzone or expansion subzone if the  
18 property is delivered or shipped to a purchaser that  
19 takes possession within the subzone, improvement subzone  
20 or expansion subzone regardless of the F.O.B. point or  
21 other conditions of the sale.

22 (ii) Sales other than sales of tangible personal  
23 property are in the subzone, improvement subzone or  
24 expansion subzone if:

25 (A) the income-producing activity is performed  
26 in the subzone, improvement subzone or expansion  
27 subzone; or

28 (B) the income-producing activity is performed  
29 both within and without the subzone, improvement  
30 subzone or expansion subzone and a greater proportion

1 of the income-producing activity is performed in the  
2 subzone, improvement subzone or expansion subzone  
3 than in any other location, based on costs of  
4 performance.]

5 \* \* \*

6 Section 5. Section 703 of the act is amended by adding a  
7 subsection to read:

8 Section 703. Local earned income and net profits taxes;  
9 business privilege taxes.

10 \* \* \*

11 (g) Determination of exemption.--For the purposes of  
12 determining an exemption under this section, a tax on or  
13 measured by any of the following shall be attributed to business  
14 activity conducted within a subzone, improvement zone or  
15 expansion zone by applying the apportionment factors under  
16 section 515(d):

17 (1) Business gross receipts.

18 (2) Gross or net income.

19 (3) Gross or net profits.

20 Section 6. Section 705 of the act, amended December 9, 2002  
21 (P.L.1727, No.217), is amended to read:

22 Section 705. Local sales and use tax.

23 (a) General rule.--The political subdivision shall exempt  
24 sales at retail of services or tangible personal property,  
25 except motor vehicles, to a qualified business or a construction  
26 contractor pursuant to a construction contract with a qualified  
27 business, landowner or lessee for the exclusive use, consumption  
28 and utilization of the tangible personal property or service by  
29 the qualified business at [its] the qualified business's,  
30 landowner's or lessee's facility located within a subzone,

1 improvement subzone or expansion subzone from a city or county  
2 tax on purchase price authorized under Article XXXI-B of the act  
3 of July 28, 1953 (P.L.723, No.230), known as the Second Class  
4 County Code, as amended, and the act of June 5, 1991 (P.L.9,  
5 No.6), known as the Pennsylvania Intergovernmental Cooperation  
6 Authority Act for Cities of the First Class, as amended. No  
7 exemption may be granted for sales occurring prior to  
8 designation of the real property as part of a subzone or  
9 expansion subzone.

10 (b) [Construction contracts.--For any construction contract  
11 performed in a subzone, improvement subzone or expansion  
12 subzone, the exemption provided in subsection (a) shall only  
13 apply to the sale at retail or use of building machinery and  
14 equipment to a qualified business, or to a construction  
15 contractor pursuant to a construction contract with a qualified  
16 business, for the exclusive use, consumption and utilization by  
17 the qualified business at its facility in a subzone, improvement  
18 subzone or expansion subzone. For the purposes of the subzone,  
19 improvement subzone or expansion subzone exemption, building  
20 machinery and equipment shall include distribution equipment  
21 purchased for the exclusive use, consumption and utilization in  
22 a subzone, improvement subzone or expansion subzone facility.]

23 (Reserved).

24 (c) Definition.--Sales at retail of tangible personal  
25 property and services shall be defined in accordance with  
26 Article II of the Tax Reform Code of 1971.

27 Section 7. The amendment of sections 515 and 703 of the act  
28 shall apply to taxable years beginning after December 31, 2008.

29 Section 8. This act shall take effect in 60 days.