

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2435 Session of 2010

INTRODUCED BY D. EVANS, APRIL 20, 2010

REFERRED TO COMMITTEE ON APPROPRIATIONS, APRIL 20, 2010

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," repealing provisions relating to discounts;
11 further providing for the definition of "taxable" and taxable
12 year"; providing for the definitions of "commonly controlled
13 group" and "separate company"; further providing for
14 imposition of tax, for reports and payment of tax and for
15 consolidated reports; providing for provisions relating to
16 the taxation of tobacco products; imposing a tax on the
17 extraction of natural gas; providing for natural gas
18 severance registration certificate, for duties of the
19 Department of Revenue, for tax assessments and tax liens;
20 imposing penalties; providing for service of process, for
21 rulemaking, for cooperation with other governments and for
22 bonds; further providing for underpayment of estimated tax;
23 imposing penalties; and making an appropriation.

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

26 Section 1. Section 227 of the act of March 4, 1971 (P.L.6,
27 No.2), known as the Tax Reform Code of 1971, is repealed:

28 [Section 227. Discount.--If a return is filed by a licensee
29 and the tax shown to be due thereon less any discount is paid

1 all within the time prescribed, the licensee shall be entitled
2 to credit and apply against the tax payable by him a discount of
3 one per cent of the amount of the tax collected by him on and
4 after the effective date of this article, as compensation for
5 the expense of collecting and remitting the same and as a
6 consideration of the prompt payment thereof.]

7 Section 1.1 Section 401(3)1(a) and (b), 2(a) and 4(c) and
8 (5) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
9 Reform Code of 1971, amended or added December 23, 1983
10 (P.L.370, No.90), July 1, 1985 (P.L.78, No.29), August 4, 1991
11 (P.L.97, No.22), May 12, 1999 (P.L.26, No.4), June 22, 2001
12 (P.L.353, No.23), June 29, 2002 (P.L.559, No.89) and October 9,
13 2009 (P.L.451, No.48), are amended, clause (3)2 is amended by
14 adding a phrase and the section is amended by adding clauses to
15 read:

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

20 * * *

21 (3) "Taxable income." 1. (a) In case the entire business
22 of the corporation is transacted within this Commonwealth, for
23 any taxable year which begins on or after January 1, 1971,
24 taxable income for the calendar year or fiscal year as returned
25 to and ascertained by the Federal Government, or in the case of
26 a corporation participating in the filing of consolidated
27 returns to the Federal Government or that is not required to
28 file a return with the Federal Government, the taxable income
29 which would have been returned to and ascertained by the Federal
30 Government if separate returns had been made to the Federal

Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government.

(b) Additional deductions shall be allowed from taxable income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government. For tax years beginning on or after January 1, 1991, additional deductions shall only be allowed for amounts included, under section 78 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 78), in taxable income returned to and ascertained by the Federal Government and for the amount of any dividends received from a foreign corporation included in taxable income to the extent such dividends would be deductible in arriving at Federal taxable income if received from a domestic corporation. For taxable years beginning on or after January 1, 2011, if not otherwise allowed as a deduction, an additional deduction is allowed for all dividends paid by one to another of the included corporations of a unitary business to the extent those dividends are included in business income of a corporation that is required to determine its business income pursuant to paragraph (1) of phrase (e) of subclause 2.

* * *

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

1 follows:

2 (a) Division of Income.

3 (1) As used in this definition, unless the context otherwise
4 requires:

5 (A) "Business income" means income arising from transactions
6 and activity in the regular course of the taxpayer's trade or
7 business and includes income from tangible and intangible
8 property if either the acquisition, the management or the
9 disposition of the property constitutes an integral part of the
10 taxpayer's regular trade or business operations. The term
11 includes all income which is apportionable under the
12 Constitution of the United States.

13 (B) "Commercial domicile" means the principal place from
14 which the trade or business of the taxpayer is directed or
15 managed.

16 (C) "Compensation" means wages, salaries, commissions and
17 any other form of remuneration paid to employees for personal
18 services.

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

22 (E) "Sales" means all gross receipts of the taxpayer not
23 allocated under this definition other than dividends received,
24 interest on United States, state or political subdivision
25 obligations and gross receipts heretofore or hereafter received
26 from the sale, redemption, maturity or exchange of securities,
27 except those held by the taxpayer primarily for sale to
28 customers in the ordinary course of its trade or business.

29 (F) "State" means any state of the United States, the
30 District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, and any foreign country or political subdivision thereof.

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

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

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

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

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

(B) Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in this State, or in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer

1 is not organized under the laws of or taxable in the state in
2 which the property is utilized.

3 (C) The extent of utilization of tangible personal property
4 in a state is determined by multiplying the rents and royalties
5 by a fraction, the numerator of which is the number of days of
6 physical location of the property in the state during the rental
7 or royalty period in the taxable year and the denominator of
8 which is the number of days of physical location of the property
9 everywhere during all rental or royalty periods in the taxable
10 year. If the physical location of the property during the rental
11 or royalty period is unknown or unascertainable by the taxpayer,
12 tangible personal property is utilized in the state in which the
13 property was located at the time the rental or royalty payer
14 obtained possession.

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

17 (B) Gains and losses from sales or other disposition of
18 tangible personal property are allocable to this State if the
19 property had a situs in this State at the time of the sale, or
20 the taxpayer's commercial domicile is in this State and the
21 taxpayer is not taxable in the state in which the property had a
22 situs.

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

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

28 (8) (A) Patent and copyright royalties are allocable to
29 this State if and to the extent that the patent or copyright is
30 utilized by the payer in this State, or if and to the extent

1 that the patent copyright is utilized by the payer in a state in
2 which the taxpayer is not taxable and the taxpayer's commercial
3 domicile is in this State.

4 (B) A patent is utilized in a state to the extent that it is
5 employed in production, fabrication, manufacturing, or other
6 processing in the state or to the extent that a patented product
7 is produced in the state. If the basis of receipts from patent
8 royalties does not permit allocation to states or if the
9 accounting procedures do not reflect states of utilization, the
10 patent is utilized in the state in which the taxpayer's
11 commercial domicile is located.

12 (C) A copyright is utilized in a state to the extent that
13 printing or other publication originates in the state. If the
14 basis of receipts from copyright royalties does not permit
15 allocation to states or if the accounting procedures do not
16 reflect states of utilization, the copyright is utilized in the
17 state in which the taxpayer's commercial domicile is located.

18 (9) (A) Except as provided in subparagraph (B):

19 (i) For taxable years beginning before January 1, 2007, all
20 business income shall be apportioned to this State by
21 multiplying the income by a fraction, the numerator of which is
22 the property factor plus the payroll factor plus three times the
23 sales factor and the denominator of which is five.

24 (ii) For taxable years beginning after December 31, 2006,
25 all business income shall be apportioned to this State by
26 multiplying the income by a fraction, the numerator of which is
27 the sum of fifteen times the property factor, fifteen times the
28 payroll factor and seventy times the sales factor and the
29 denominator of which is one hundred. (iii) For taxable years
30 beginning after December 31, 2008, all business income shall be

1 apportioned to this State by multiplying the income by a
2 fraction, the numerator of which is the sum of eight and a half
3 times the property factor, eight and a half times the payroll
4 factor and eighty-three times the sales factor and the
5 denominator of which is one hundred.

6 (iii) For taxable years beginning after December 31, 2008,
7 all business income shall be apportioned to this State by
8 multiplying the income by a fraction, the numerator of which is
9 the sum of eight and a half times the property factor, eight and
10 a half times the payroll factor and eighty-three times the sales
11 factor and the denominator of which is one hundred.

12 (iv) For taxable years beginning after December 31, 2009,
13 and before January 1, 2011, all business income shall be
14 apportioned to this State by multiplying the income by a
15 fraction, the numerator of which is the sum of five times the
16 property factor, five times the payroll factor and ninety times
17 the sales factor and the denominator of which is one hundred.

18 (v) For taxable years beginning after December 31, 2010, all
19 business income shall be apportioned to this State by the sales
20 factor. This includes any railroad, truck, bus, airline,
21 pipeline, natural gas or water transportation company that is
22 required to determine its business income pursuant to paragraph
23 (1) of phrase (e) of this subclause.

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

29 (10) The property factor is a fraction, the numerator of
30 which is the average value of the taxpayer's real and tangible

1 personal property owned or rented and used in this State during
2 the tax period and the denominator of which is the average value
3 of all the taxpayer's real and tangible personal property owned
4 or rented and used during the tax period but shall not include
5 the security interest of any corporation as seller or lessor in
6 personal property sold or leased under a conditional sale,
7 bailment lease, chattel mortgage or other contract providing for
8 the retention of a lien or title as security for the sales price
9 of the property.

10 (11) Property owned by the taxpayer is valued at its
11 original cost. Property rented by the taxpayer is valued at
12 eight times the net annual rental rate. Net annual rental rate
13 is the annual rental rate paid by the taxpayer less any annual
14 rental rate received by the taxpayer from subrentals.

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

20 (13) The payroll factor is a fraction, the numerator of
21 which is the total amount paid in this State during the tax
22 period by the taxpayer for compensation and the denominator of
23 which is the total compensation paid everywhere during the tax
24 period.

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

26 (A) The individual's service is performed entirely within
27 the State;

28 (B) The individual's service is performed both within and
29 without this State, but the service performed without the State
30 is incidental to the individual's service within this State; or

1 (C) Some of the service is performed in this State and the
2 base of operations or if there is no base of operations, the
3 place from which the service is directed or controlled is in
4 this State, or the base of operations or the place from which
5 the service is directed or controlled is not in any state in
6 which some part of the service is performed, but the
7 individual's residence is in this State.

8 (15) The sales factor is a fraction, the numerator of which
9 is the total sales of the taxpayer in this State during the tax
10 period, and the denominator of which is the total sales of the
11 taxpayer everywhere during the tax period.

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

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

19 (A) The income-producing activity is performed in this
20 State; or

21 (B) The income-producing activity is performed both in and
22 outside this State and a greater proportion of the income-
23 producing activity is performed in this State than in any other
24 state, based on costs of performance.

25 (17.1) Other sales are in this State as follows:

26 (A) Gross receipts from the sale, lease, rental or other use
27 of real property are in this State if the real property is
28 located in this State.

29 (B) Gross receipts from the rental, lease or licensing of
30 tangible personal property are in this State if the tangible

1 personal property is located in this State. If such property is
2 within and without this State, gross receipts are in this State
3 in proportion to the time located in this State to total time
4 located within and without this State.

5 (C) Gross receipts from the investment of intangible
6 property or the sale of investment intangible property are in
7 this State if this State is the taxpayer's commercial domicile.
8 Gross receipts from the sale of other intangible property that
9 is not sold in the regular course of business are in this State
10 if this State is the taxpayer's commercial domicile.

11 (D) Gross receipts from the licensing of intangible property
12 are in this State if the licensee uses the licensed property in
13 this State. If the licensee uses the licensed property within
14 and without this State, gross receipts are in this State in
15 proportion to the uses in this State to the total uses within
16 and without this State. If the licensor's sales are determined
17 by sales of licensed products by the licensee, the licensee's
18 sales are uses by the licensee.

19 (E) Gross receipts from services are in this State if the
20 purchaser of the services receives the benefit of the services
21 in this State. If the purchaser of services receives the benefit
22 of the services within and without this State, gross receipts
23 are in this State in proportion to the benefit of the services
24 received in this State to the total benefit received within and
25 without this State.

26 (F) Gross receipts from retail sales of electricity and
27 natural gas are in this State if the end-use purchaser is in
28 this State. Gross receipts from wholesale sales of electricity
29 and natural gas are in this State if the end-use purchaser is in
30 this State and the wholesaler knows that the ultimate delivery

1 is to an end-use purchaser in this State. If the point of
2 ultimate delivery to an end-use customer is unknown for
3 wholesale sales, such sales are in this State when the purchaser
4 of the wholesale sale is located in this State.

5 (G) Gross receipts from the sale of software are in this
6 State when the software is delivered to a purchaser in this
7 State. If the software is delivered to locations of the
8 purchaser, which are within and without this State, gross
9 receipts are in this State in proportion to the delivery
10 locations in this State to total delivery locations within and
11 without this State.

12 (17.2) In order to determine sales in this State of any
13 railroad, truck, bus, airline, pipeline, natural gas or water
14 transportation company that is required to determine its
15 business income pursuant to paragraph (1) of phrase (e) of this
16 subclause, such company must convert the relevant fraction set
17 forth in phrase (b), (c) or (d) of this subclause to gross
18 receipts. Sales in this State are the result of multiplying
19 total gross receipts from relevant transportation activities by
20 the decimal equivalent of the relevant fraction set forth in
21 phrase (b), (c) or (d) of this subclause.

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

27 (A) Separate accounting;

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

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

1 State; or

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

8 * * *

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

10 (1) Notwithstanding any contrary provisions of this article,
11 for taxable years that begin on or after January 1, 2011,
12 business income of a corporation that is a member of a unitary
13 business that consists of two or more corporations, at least one
14 of which does not transact its entire business in this State, is
15 determined by combining the business income of either all
16 corporations, other than as set forth below, that are water's-
17 edge basis members or all corporations, other than as set forth
18 below, that are worldwide members of the unitary business.
19 Business income from an intercompany transaction between
20 included corporations of a unitary business that is deferred
21 under 26 CFR 1.1502-13 (relating to intercompany transactions)
22 for Federal taxable income purposes shall be deferred in the
23 same manner in determining the business income of a corporation
24 that is a member of that unitary business. Business income of
25 the following corporations is not included in the determination
26 of combined business income:

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

29 (ii) any corporation specified in the definition of
30 "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, 2011, 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. Gross receipts from an intercompany
transaction between included corporations of a unitary business
are eliminated unless the gross receipts are derived from
transactions that are deferred in the manner set forth under 26

CFR 1.1502-13 in computing the numerator and denominator of the apportionment fraction of a corporation that is required to compute its business income under paragraph (1). Gross receipts from transactions that had been deferred in the manner set forth in CFR 1.1502-13 are included in a corporation's apportionment fraction during the same taxable year that it realizes business income that had been deferred due to the transaction. 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 this State;

(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).

1 (3) A corporation that is required to compute its business
2 income under paragraph (1) shall apportion such combined
3 business income by multiplying such combined business income by
4 a fraction, the numerator of which is its total sales in this
5 State and the dominator of which is combined sales as set forth
6 in paragraph (2).

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

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

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

27 (7) The Secretary of Revenue has the authority and
28 responsibility to make adjustments to insure that a corporation
29 does not incur an unfair penalty nor realize an unfair benefit
30 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:

(A) (I) For taxable years beginning before January 1, 2007, two million dollars (\$2,000,000);

(II) For taxable years beginning after December 31, 2006, the greater of twelve and one-half per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000);

(III) For taxable years beginning after December 31, 2008, the greater of fifteen per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000);

(IV) For taxable years beginning after December 31, 2009, through tax years that begin on or prior to December 31, 2010, the greater of twenty per cent of taxable income as determined under subclause 1 or, if applicable, subclause 2 or three million dollars (\$3,000,000); or

(B) 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.

(1.1) 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.

(1.2) Except as set forth in paragraph (4), there is no maximum on the amount of the net loss deduction allowed for

1 taxable years beginning on or after January 1, 2011.

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

4 Taxable Year	Carryover
5 1981	1 taxable year
6 1982	2 taxable years
7 1983-1987	3 taxable years
8 1988	2 taxable years plus 1 taxable
9	year starting with the 1995
10	taxable year
11 1989	1 taxable year plus 2 taxable
12	years starting with the 1995
13	taxable year
14 1990-1993	3 taxable years starting with
15	the 1995 taxable year
16 1994	1 taxable year
17 1995-1997	10 taxable years
18 1998 and thereafter	20 taxable years

19 (B) The earliest net loss shall be carried over to the
20 earliest taxable year to which it may be carried under this
21 schedule. The total net loss deduction allowed in any taxable
22 year shall not exceed:

23 (I) Two million dollars (\$2,000,000) for taxable years
24 beginning before January 1, 2007.

25 (II) The greater of twelve and one-half per cent of the
26 taxable income as determined under subclause 1 or, if
27 applicable, subclause 2 or three million dollars (\$3,000,000)
28 for taxable years beginning after December 31, 2006.

29 (III) The greater of fifteen per cent of the taxable income
30 as determined under subclause 1 or, if applicable, subclause 2

1 or three million dollars (\$3,000,000) for taxable years
2 beginning after December 31, 2008.

3 (IV) The greater of twenty per cent of the taxable income as
4 determined under subclause 1 or, if applicable, subclause 2 or
5 three million dollars (\$3,000,000) for taxable years beginning
6 after December 31, 2009, through tax years that begin on or
7 prior to December 31, 2010.

8 (3) The entire net loss for a taxable year that begins on or
9 after January 1, 2011, is available to be carried over to a
10 taxable year that begins on or after January 1, 2012, pursuant
11 to the schedule set forth in paragraph (2) and shall be carried
12 over to the earliest taxable year to which it may be carried
13 pursuant to the schedule set forth in paragraph (2).

14 (4) The amount of unused net loss from all taxable years
15 that begin prior to January 1, 2011, that may be carried over to
16 any taxable year that begins on or after January 1, 2011, is
17 limited to the greater of twenty per cent of the taxable income
18 as determined under subclause 1 or, if applicable, subclause 2
19 or three million dollars (\$3,000,000) per taxable year and may
20 only be used by the corporation that realized the net loss. If a
21 corporation is required to determine its business income
22 pursuant to paragraph (1) of phrase (e) of subclause 2, it may
23 only use such loss in a year to the extent that it has taxable
24 income before use of such loss determined as if it were a
25 separate company.

26 (5) Any net loss realized for a taxable year that begins on
27 or after January 1, 2011, by one corporation of a unitary
28 business may be used by other corporations of the same unitary
29 business, provided that the corporation that realized the net
30 loss must first use the portion of such net loss to reduce its

1 taxable income to zero. Other corporations of the same unitary
2 business that have insufficient net losses of their own to
3 reduce their tax liabilities to zero may then use the remainder
4 of such net loss in proportion to their remaining taxable
5 incomes before the application of such loss.

6 (6) Any net loss realized for a taxable year that begins on
7 or after January 1, 2011, unused by a corporation which
8 subsequently becomes a member of another unitary business may
9 only be used by that corporation.

10 * * *

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

24 2. All corporations of a unitary business shall have a
25 common taxable year for purposes of computing tax due under this
26 article. The taxable year for such purposes is the common
27 taxable year adopted, in a manner prescribed by the department,
28 by all corporations of a unitary business. The common taxable
29 year must be used by all corporations of that unitary business
30 in the year of adoption and all future years unless otherwise

1 permitted by the department.

2 * * *

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

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

18 (10) "Water's-edge basis." A system of reporting that
19 includes the business income and apportionment factor of certain
20 corporations of a unitary business, described as follows:

21 1. The business income and apportionment factor of any
22 member incorporated in the United States or formed under the
23 laws of any state of the United States, the District of
24 Columbia, any territory or possession of the United States or
25 the Commonwealth of Puerto Rico.

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

30 3. The 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). The effective rate of income tax determination shall be based upon the

1 methodology set forth under 26 CFR 1.954-1 (relating to foreign
2 base company income).

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

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

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

21 Section 2. Section 402(b) of the act, amended June 29, 2002
22 (P.L.559, No.89), is amended to read:

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

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

Taxable Year	Tax Rate
January 1, 1995, [and	
each taxable year	

thereafter] through
taxable years
beginning December
31, 2010 9.99%
January 1, 2011, and
each taxable year
thereafter 8.99%

* * *

Section 3. Section 403 of the act is amended by adding
subsections to read:

Section 403. Reports and Payment of Tax.--* * *

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

(2) The oath or affirmation of the designated member's
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.

1 (iii) Strong centralized management of corporations.

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

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

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

16 (a.4) As far as applicable to a specific unitary business,
17 unless there is a revision of applicable State law or unless a
18 corporation is not included under the provisions of this
19 article, there is a presumption for all tax years that begin in
20 years 2011 and 2012 that a unitary business of two or more
21 corporations includes at least all corporations that are part of
22 a unitary business under the law of any state of the United
23 States in which the corporation files a tax report or tax return
24 of combined net income for the same tax year.

25 (a.5) Unless an election is made to use a worldwide basis of
26 accounting, a corporation that is a member of a unitary business
27 of two or more corporations must determine its business income
28 and apportionment factor upon a water's-edge basis. This basis
29 applies to all corporations of the unitary business. If an
30 election is made to use a worldwide basis of accounting, all

corporations of the unitary business must make the election,
upon a form, prescribed, prepared and furnished by the
department. This election binds all corporations of the unitary
business for the period of time that the election remains in
effect. An initial election is binding for a period of seven
taxable years. Subsequent elections are binding for a period of
five taxable years.

* * *

Section 4. Section 404 of the act is amended to read:

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

Section 4.1. The act is amended by adding articles to read:

ARTICLE XII-A

TOBACCO PRODUCTS TAX

Section 1201-A. 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:

"Cigar." Any roll of tobacco wrapped in tobacco, not
including little cigars.

"Cigarette." Includes any roll for smoking made wholly or in
part of tobacco, irrespective of size or shape, and whether or
not such tobacco is flavored, adulterated or mixed with any
other ingredient, the wrapper or cover of which is made of paper
or any other substance or material, excepting tobacco, and shall
not include cigars or roll your own tobacco. The term shall

1 include little cigars.

2 "Consumer." An individual who purchases tobacco products for
3 personal use and not for resale.

4 "Contraband." Any tobacco product for which the tax imposed
5 by this article has not been paid.

6 "Dealer." A wholesaler or retailer. Nothing in this article
7 shall preclude any person from being a wholesaler or retailer,
8 provided the person meets the requirements for a license in each
9 category of dealer.

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

11 "Little cigar." Any roll for smoking that weighs not more
12 than four pounds per thousand, where the wrapper or cover is
13 made of natural leaf tobacco or any substance containing
14 tobacco.

15 "Manufacturer." A person that produces tobacco products.

16 "Person." An individual, unincorporated association,
17 company, corporation, joint stock company, group, agency,
18 syndicate, trust or trustee, receiver, fiduciary, partnership,
19 conservator, any political subdivision of the Commonwealth or
20 any other state. Whenever used in any of the provisions of this
21 article prescribing or imposing penalties, the word "person" as
22 applied to a partnership, unincorporated association or other
23 joint venture, means the partners or members thereof, and as
24 applied to a corporation, means all the officers and directors
25 thereof.

26 "Purchase price." The total value of anything paid or
27 delivered, or promised to be paid or delivered, whether it be
28 money or otherwise, in complete performance of a sale or
29 purchase, without any deduction on account of the cost or value
30 of the property sold, cost or value of transportation, cost or

value of labor or service, interest or discount paid or allowed after the sale is consummated, any other taxes imposed by the Commonwealth or any other expense.

"Retailer." A person that purchases or receives tobacco products from any source for the purpose of sale to a consumer, or who owns, leases or otherwise operates one or more vending machines for the purpose of sale of tobacco products to the ultimate consumer. The term includes a vending machine operator or a person that buys, sells, transfers or deals in tobacco products and is not licensed as a tobacco products wholesaler under this article.

"Roll-your-own tobacco." Any tobacco which, because of its appearance, type, packaging or labeling, is suitable for use and is likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of reporting sales of this product under the act of June 22, 2000 (P.L.394, No.54), known as the Tobacco Settlement Agreement Act, 0.09 ounces of tobacco shall constitute one individual unit sold.

"Sale." Any transfer of ownership, custody or possession of tobacco products for consideration; any exchange, barter or gift; or any offer to sell or transfer the ownership, custody or possession of tobacco products for consideration.

"Taxpayer." Any person subject to tax under this article.

"Tobacco products." Cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, roll-your-own tobacco, snuff, dry snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or

1 ingesting or for smoking in a pipe or otherwise, or both for
2 chewing and smoking. The term does not include cigarettes.

3 "Unclassified importer." A person in this Commonwealth that
4 acquires a tobacco product from any source on which the tax
5 imposed by this article was not paid and that is not a person
6 otherwise required to be licensed under the provisions of this
7 article. The term includes, but is not limited to, consumers who
8 purchase tobacco products using the Internet or mail order
9 catalogs for personal possession or use in this Commonwealth.

10 "Vending machine operator." A person who places or services
11 one or more tobacco product vending machines whether owned,
12 leased or otherwise operated by the person at locations from
13 which tobacco products are sold to the consumer. The owner or
14 tenant of the premises upon which a vending machine is placed
15 shall not be considered a vending machine operator if the
16 owner's or tenant's sole remuneration therefrom is a flat rental
17 fee or commission based upon the number or value of tobacco
18 products sold from the machine, unless the owner or tenant
19 actually owns the vending machine or leases the vending machine
20 under an agreement whereby any profits from the sale of the
21 tobacco products directly inure to the owner's or tenant's
22 benefit.

23 "Wholesaler." A person engaged in the business of selling
24 tobacco products that receives, stores, sells, exchanges or
25 distributes tobacco products to retailers or other wholesalers
26 in this Commonwealth or retailers who purchase from a
27 manufacturer or from another wholesaler who has not paid the tax
28 imposed by this article.

29 Section 1202-A. Incidence and rate of tax.

30 (a) Imposition.--A tobacco products tax is hereby imposed on

1 the dealer, manufacturer or any person at the time the tobacco
2 product is first sold to a retailer in this Commonwealth at the
3 rate of 30% on the purchase price charged to the retailer for
4 the purchase of any tobacco product. The tax shall be collected
5 from the retailer by whomever sells the tobacco product to the
6 retailer and remitted to the department. Any person required to
7 collect this tax shall separately state the amount of tax on an
8 invoice or other sales document.

9 (b) Retailer.--If the tax is not collected by the seller
10 from the retailer, the tax is imposed on the retailer at the
11 time of purchase at the same rate as in subsection (a) based on
12 the retailer's purchase price of the tobacco products. The
13 retailer shall remit the tax to the department.

14 (c) Unclassified importer.--The tax is imposed on an
15 unclassified importer at the time of purchase at the same rate
16 as in subsection (a) based on the unclassified importer's
17 purchase price of the tobacco products. The unclassified
18 importer shall remit the tax to the department.

19 (d) Exceptions.--The tax shall not be imposed on any tobacco
20 products that:

21 (1) are exported for sale outside this Commonwealth; or

22 (2) are not subject to taxation by the Commonwealth
23 pursuant to any laws of the United States.

24 Section 1203-A. Floor tax.

25 (a) Payment.--Any retailer that, as of the effective date of
26 this article, possesses tobacco products subject to the tax
27 imposed by section 1202-A, shall pay the tax on the tobacco
28 products in accordance with the rates specified in section 1202-
29 A. The tax shall be paid and reported on a form prescribed by
30 the department within 90 days of the effective date of this

1 section.

2 (b) Administrative penalty; license.--If a retailer fails to
3 file the report required by subsection (a) or fails to pay the
4 tax imposed by subsection (a), the department may, in addition
5 to the interest and penalties provided in section 1215-A, do any
6 of the following:

7 (1) Impose an administrative penalty equal to the amount
8 of tax evaded or not paid. The penalty shall be added to the
9 tax evaded or not paid and assessed and collected at the same
10 time and in the same manner as the tax.

11 (2) Suspend, revoke or refuse to issue the retailer's
12 license.

13 (c) Criminal penalty.--In addition to any penalty imposed
14 under subsection (b), a person that willfully omits, neglects or
15 refuses to comply with a duty imposed under subsection (a)
16 commits a misdemeanor and shall, if convicted, be sentenced to
17 pay a fine of not less than \$2,500 nor more than \$5,000, to
18 serve a term of imprisonment not to exceed 30 days, or both.

19 Section 1204-A. Remittance of tax to department.

20 Wholesalers, retailers, unclassified importers and
21 manufacturers shall file monthly reports on a form prescribed by
22 the department by the 20th day of the month following the sale
23 or purchase of tobacco products from any other source on which
24 the tax levied by this article has not been paid. The tax is due
25 at the time the report is due. The department may required the
26 filing of reports and payment of tax on a less frequent basis at
27 its discretion.

28 Section 1205-A. (Reserved).

29 Section 1206-A. Procedures for claiming refund.

30 A claim for a refund of tax imposed by this article under

section 3003.1 and Article XXVII shall be in the form and
contain the information prescribed by the department by
regulation.

Section 1207-A. Sales or possession of tobacco product when tax
not paid.

(a) Sales or possession.--Any person who sells or possesses
any tobacco product for which the proper tax has not been paid
commits a summary offense and shall, upon conviction, be
sentenced to pay costs of prosecution and a fine of not less
than \$100 not more than \$1,000 or to imprisonment for not more
than 60 days, or both, at the discretion of the court. Any
tobacco products purchased from a wholesaler properly licensed
under this article shall be presumed to have the proper taxes
paid.

(b) Tax evasion.--Any person that shall falsely or
fraudulently, maliciously, intentionally or willfully with
intent to evade the payment of the tax imposed by this article
sells or possesses any tobacco product for which the proper tax
has not been paid commits a felony and shall, upon conviction,
be sentenced to pay costs of prosecution and a fine of not more
than \$15,000 or to imprisonment for not more than five years, or
both, at the discretion of the court.

Section 1208-A. Assessment.

The department is authorized to make the inquiries,
determinations and assessments of the tax, including interest,
additions and penalties, imposed by this article.

Section 1209-A. (Reserved).

Section 1210-A. (Reserved).

Section 1211-A. Failure to file return.

Where no return is filed, the amount of the tax due may be

1 assessed and collected at any time as to taxable transactions
2 not reported.

3 Section 1212-A. False or fraudulent return.

4 Where the taxpayer willfully files a false or fraudulent
5 return with intent to evade the tax imposed by this article, the
6 amount of tax due may be assessed and collected at any time.

7 Section 1213-A. Extension of limitation period.

8 Notwithstanding any other provision of this article, where,
9 before the expiration of the period prescribed for the
10 assessment of a tax, a taxpayer has consented, in writing, that
11 the period be extended, the amount of tax due may be assessed at
12 any time within the extended period. The period so extended may
13 be extended further by subsequent consents, in writing, made
14 before the expiration of the extended period.

15 Section 1214-A. Failure to furnish information, returning false
16 information or failure to permit inspection.

17 (a) Penalty.--Any taxpayer who fails to keep or make any
18 record, return, report, inventory or statement, or keeps or
19 makes any false or fraudulent record, return, report, inventory
20 or statement required by this article commits a misdemeanor and
21 shall, upon conviction, be sentenced to pay costs of prosecution
22 and a fine of \$500 and to imprisonment for not more than one
23 year, or both, at the discretion of the court.

24 (b) Examination.--The department is authorized to examine
25 the books and records, the stock of tobacco products and the
26 premises and equipment of any taxpayer in order to verify the
27 accuracy of the payment of the tax imposed by this article. The
28 person subject to an examination shall give to the department or
29 its duly authorized representative, the means, facilities and
30 opportunity for the examination. Willful refusal to cooperate

1 with or permit an examination to the satisfaction of the
2 department shall be sufficient grounds for the suspension or
3 revocation of a taxpayer's license. In addition, a person who
4 willfully refuses to cooperate with or permit an examination to
5 the satisfaction of the department commits a misdemeanor and
6 shall, upon conviction, be sentenced to pay costs of prosecution
7 and a fine of \$500 or to imprisonment for not more than one
8 year, or both, at the discretion of the court.

9 (c) Records; dealer or manufacturer.--A dealer or
10 manufacturer shall keep and maintain for a period of four years
11 records in the form prescribed by the department. The records
12 shall be maintained at the location for which the license is
13 issued.

14 (d) Reports.--A dealer or manufacturer shall file reports at
15 times and in the form prescribed by the department.

16 (e) Records; manufacturer or wholesaler.--A manufacturer or
17 wholesaler located or doing business in this Commonwealth who
18 sells tobacco products to a wholesale license holder in this
19 Commonwealth shall keep records showing:

20 (1) The number and kind of tobacco products sold.

21 (2) The date the tobacco products were sold.

22 (3) The name and license number of the dealer the
23 tobacco products were sold to.

24 (4) The total weight of each of the tobacco products
25 sold to the license holder.

26 (5) The place where the tobacco products were shipped.

27 (6) The name of the common carrier.

28 (f) Manufacturer or wholesaler.--A manufacturer or
29 wholesaler shall file with the department, on or before the 20th
30 of each month, a report showing the information listed in

subsection (e) for the previous month.

Section 1215-A. Other violations; peace officers; fines.

Sections 1278, 1279, 1280 and 1291 are incorporated by reference into and shall apply to the tax imposed by this article.

Section 1216-A. (Reserved).

Section 1217-A. (Reserved).

Section 1218-A. (Reserved).

Section 1219-A. Records of shipments and receipts of tobacco products required.

The department may, in its discretion, require reports from any common or contract carrier who transports tobacco products to any point or points within this Commonwealth, and from any bonded warehouseman or bailee who has in the possession of the warehouseman or bailee any tobacco products. The reports shall contain the information concerning shipments of tobacco products that the department determines to be necessary for the administration of this article. All common and contract carriers, bailees and warehousemen shall permit the examination by the department or its authorized agents of any records relating to the shipment or receipt of tobacco products.

Section 1220-A. Licensing of dealers and manufacturers.

(a) Prohibition.--No person, unless all sales of tobacco products are exempt from Pennsylvania tobacco products tax, shall sell, transfer or deliver any tobacco products in this Commonwealth without first obtaining the proper license provided for in this article.

(b) Application.--An applicant for a dealer's or manufacturer's license shall complete and file an application with the department. The application shall be in the form and

contain information prescribed by the department and shall set forth truthfully and accurately the information desired by the department. If the application is approved, the department shall license the dealer or manufacturer for a period of one year and the license may be renewed annually thereafter.

Section 1221-A. Licensing of manufacturers.

Any manufacturer doing business within this Commonwealth shall first obtain a license to sell tobacco products by submitting an application to the department containing the information requested by the department and designating a process agent. If a manufacturer designates no process agent, the manufacturer shall be deemed to have made the Secretary of State its agent for the service of process in this Commonwealth.

Section 1222-A. Licensing of wholesalers.

(a) Requirements.--Applicants for a wholesale license or renewal of that license shall meet the following requirements:

(1) The premises on which the applicant proposes to conduct business are adequate to protect the revenue.

(2) The applicant is a person of reasonable financial stability and reasonable business experience.

(3) The applicant, or any shareholder controlling more than 10% of the stock if the applicant is a corporation or any officer or director if the applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(4) The applicant shall not have failed to disclose any material information required by the department, including information that the applicant has complied with this article by providing a signed statement under penalty of perjury.

(5) The applicant shall not have made any material false

1 statement in the application.

2 (6) The applicant shall not have violated any provision
3 of this article.

4 (7) The applicant shall have filed all required State
5 tax reports and paid any State taxes not subject to a timely
6 perfected administrative or judicial appeal or subject to a
7 duly authorized deferred payment plan.

8 (b) Multiple locations.--The wholesale license shall be
9 valid for one specific location only. Wholesalers with more than
10 one location shall obtain a license for each location.

11 Section 1223-A. Licensing of retailers.

12 Applicants for retail license or renewal of that license
13 shall meet the following requirements:

14 (1) The premises in which the applicant proposes to
15 conduct business are adequate to protect the revenues.

16 (2) The applicant shall not have failed to disclose any
17 material information required by the department.

18 (3) The applicant shall not have any material false
19 statement in the application.

20 (4) The applicant shall not have violated any provision
21 of this article.

22 (5) The applicant shall have filed all required State
23 tax reports and paid any State taxes not subject to a timely
24 perfected administrative or judicial appeal or subject to a
25 duly authorized deferred payment plan.

26 Section 1224-A. License for tobacco products vending machines.

27 Each tobacco products vending machine shall have a current
28 retail license which shall be conspicuously and visibly placed
29 on the machine. There shall be conspicuously and visibly placed
30 on every tobacco products vending machine the name and address

1 of the owner and the name and address of the operator.

2 Section 1225-A. License fees and issuance and display of
3 license.

4 (a) At the time of making any application or license renewal
5 application:

6 (1) An applicant for a tobacco products manufacturers
7 license shall pay the department a license fee of \$1,500.

8 (2) An applicant for a wholesale tobacco products
9 dealer's license shall pay to the department a license fee of
10 \$1,500.

11 (3) An applicant for a retail tobacco products dealer's
12 license shall pay to the department a license fee of \$25.

13 (4) An applicant for a vending machine tobacco products
14 dealer's license shall pay to the department a license fee of
15 \$25.

16 (b) Proration.--Fees shall not be prorated.

17 (c) Issuance and display.--On approval of the application
18 and payment of the fees, the department shall issue the proper
19 license which must be conspicuously displayed at the location
20 for which it has been issued.

21 Section 1226-A. Electronic filing.

22 The department may at its discretion require that any or all
23 returns, reports or registrations that are required to be filed
24 under this article be filed electronically. Failure to
25 electronically file any return, report, registration or other
26 information the department may direct to be filed electronically
27 shall subject the taxpayer to a penalty of 5% of the tax due on
28 the return, up to a maximum of \$1,000, but not less than \$10.
29 This penalty shall be assessed at any time and collected in the
30 manner provided in this article. This penalty shall be in

1 addition to any civil penalty imposed in this article for
2 failure to furnish information or file a return. The criminal
3 penalty for failure to file a return electronically shall be the
4 same as the criminal penalty for failure to furnish information
5 or file a return under this article.

6 Section 1227-A. Expiration of license.

7 (a) Expiration.--A license shall expire on the last day of
8 June next succeeding the date upon which it was issued unless
9 the department at an earlier date suspends, surrenders or
10 revokes the license.

11 (b) Violation.--After the expiration date of the license or
12 sooner if the license is suspended, surrendered or revoked, it
13 shall be illegal for any dealer to engage directly or indirectly
14 in the business heretofore conducted by the dealer for which the
15 license was issued. Any licensee who shall, after the expiration
16 date of the license, engage in the business theretofore
17 conducted by the licensee either by way of purchase, sale,
18 distribution or in any other manner directly or indirectly
19 engaged in the business of dealing with tobacco products for
20 profit shall be in violation of this article and be subject to
21 the penalties provided in this article.

22 Section 1228-A. Administration powers and duties.

23 (a) Department.--The administration of this article is
24 hereby vested in the department. The department shall adopt
25 rules and regulations for the enforcement of this article. The
26 department may impose fees as may be necessary to cover the
27 costs incurred in administering this section.

28 (b) Joint administration.--The department is authorized to
29 jointly administer this article with other provisions of this
30 act, including joint reporting of information, forms, returns,

statements, documents or other information submitted to the
department.

Section 1229-A. Sales without license.

(a) Penalty.--Any person who shall, without being the holder
of a proper unexpired dealer's license, engage in purchasing,
selling, distributing or in any other manner directly or
indirectly engaging in the business of dealing with tobacco
products for profit commits a summary offense and shall, upon
conviction, be sentenced to pay costs of prosecution and a fine
of not less than \$250 nor more than \$1,000, or to imprisonment
for not more than 30 days, or both, at the discretion of the
court.

(b) Prima facie evidence.--Open display of tobacco products
in any manner shall be prima facie evidence that the person
displaying such tobacco products is directly or indirectly
engaging in the business of dealing with tobacco products for
profit.

Section 1230-A. Violations and penalties.

(a) Suspension.--The license of any person who violates this
article may be suspended after due notice and opportunity for a
hearing for a period of not less than five days or more than 30
days for a first violation and shall be revoked or suspended for
any subsequent violation.

(b) Fine.--In addition to the provisions of subsection (a),
upon adjudication of a first violation, the person shall be
fined not less than \$2,500 nor more than \$5,000. For subsequent
violations, the person shall, upon adjudication thereof, be
fined not less than \$5,000 nor more than \$15,000.

(c) Civil penalty.--A person who violates section 1214-A
(b), (c), or (d), or 1225-A(c), shall be subject to a civil

penalty not to exceed \$300 per violation but shall not be
subject to subsections (a) and (b).

Section 1231-A. Property rights.

(a) Incorporation.--Subject to subsection (b), section 1285
is incorporated by reference into and shall apply to this
article.

(b) Alterations.--

(1) References in section 1285 to cigarettes shall apply
to tobacco products in this article.

(2) References in section 1285 to 2,000 or more
unstamped cigarettes shall apply to tobacco products worth at
least \$500 in this article.

(3) References in section 1285 to more than 200
unstamped cigarettes shall apply to tobacco products worth at
least \$50 in this article.

Section 1232-A. Sample of tobacco products.

(a) Samples.--The department shall, by regulation, govern
the receipt, distribution of and payment of tax on sample
tobacco products issued for free distribution.

(b) Construction.--Nothing in this article or the
regulations promulgated under this article shall prohibit the
bringing into this Commonwealth by a manufacturer samples of
tobacco products to be delivered and distributed only through
licensed dealers or the manufacturers or their sales
representatives. The tax shall be paid by the manufacturer
provided all such packs bear the legend "all applicable State
taxes have been paid." Under no circumstances shall any untaxed
tobacco products be sold within this Commonwealth.

Section 1233-A. Labeling and packaging.

It shall be unlawful to knowingly possess, sell, give,

transfer or deliver to any person, any tobacco product where the packaging of which has been modified or altered by a person other than the original manufacturer. Modification or alteration shall include the placement of a sticker, writing or mark to cover information on the packages. For purposes of this section, a tobacco product package shall not be construed to have been modified or altered by a person other than the manufacturer if the most recent modification or alteration was made by the manufacturer or person authorized by the manufacturer and approved by the department.

Section 1234-A. Information exchange.

The department is authorized to exchange information with any other Federal, State or local enforcement agency for purposes of enforcing this article.

ARTICLE XXII

SEVERANCE TAX

Section 2201. Short title of article.

This article shall be known and may be cited as the Natural Gas Severance Tax Act.

Section 2202. 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:

"Accredited laboratory." A facility engaged in the testing and calibration of scientific measurement devices and certified by the Department of Environmental Protection as having met the department's standards for accreditation.

"Association." A partnership, limited partnership or any other form of unincorporated enterprise owned or conducted by two or more persons.

1 "Corporation." A corporation, joint stock association,
2 limited liability company, business trust or any other
3 incorporated enterprise organized under the laws of this
4 Commonwealth, the United States or any other state, territory or
5 foreign country or dependency.

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

7 "Gross value." The volume-weighted average market price for
8 all arms-length transactions that a producer receives at the
9 sales meter for natural gas during a reporting period.

10 "Meter." A device to measure the passage of volumes of gases
11 or liquids past a certain point.

12 "Municipality." A city, borough, incorporated town or a
13 township.

14 "Natural gas." A fossil fuel consisting of a mixture of
15 hydrocarbon gases, primarily methane, possibly including ethane,
16 propane, butane, pentane, carbon dioxide, oxygen, nitrogen and
17 hydrogen sulfide and other gas species. The term includes
18 natural gas from oil fields known as associated gas or casing
19 head gas, natural gas fields known as nonassociated gas, coal
20 beds, shale beds and other formations.

21 "Nonproducing site." A point of severance that is not
22 capable of producing natural gas in paying quantities.

23 "Paying quantities." Profit to the producer, however small,
24 over the producer's current operating expenses.

25 "Person." A natural person or a corporation, fiduciary,
26 association or other entity, including the Commonwealth, its
27 political subdivisions, instrumentalities and authorities. When
28 the term is used in a clause prescribing and imposing a penalty
29 or imposing a fine or imprisonment, or both, the term shall
30 include the members, as applied to an association, and the

1 officers, as applied to a corporation.

2 "Producer." A person who engages or continues within this
3 Commonwealth in the business of severing natural gas for sale,
4 profit or commercial use. The term does not include a person who
5 severs natural gas from a storage field.

6 "Producing site." A point of severance capable of producing
7 natural gas in paying quantities.

8 "Reporting period." A calendar month in which natural gas is
9 severed.

10 "Sales meter." A meter at the point where natural gas is
11 sold or transported to a purchaser or market.

12 "Sever," "severing" or "severance." The extraction or other
13 removal of natural gas from the soil or water of this
14 Commonwealth.

15 "Storage field." A natural formation or other site that is
16 used to store natural gas that did not originate from and has
17 been injected into the formation or site.

18 "Stripper well." A producing site or a nonproducing site
19 that is not capable of producing and does not produce more than
20 60,000 cubic feet of natural gas per day.

21 "Tax." The tax imposed under this article.

22 "Taxpayer." A person subject to the tax imposed by this
23 article.

24 "Unit." A thousand cubic feet of natural gas measured at the
25 wellhead at a temperature of 60 degrees Fahrenheit and an
26 absolute pressure of 14.73 pounds per square inch in accordance
27 with American Gas Association Standards and according to Boyle's
28 law for the measurement of gas under varying pressures with
29 deviations as follows:

30 (1) The average absolute atmospheric pressure shall be

1 assumed to be 14.4 pounds to the square inch, regardless of
2 elevation or location of point of delivery above sea level or
3 variations in atmospheric pressure from time to time.

4 (2) The temperature of the gas passing the meters shall
5 be determined by the continuous use of a recording
6 thermometer installed to properly record the temperature of
7 gas flowing through the meters. The arithmetic average of the
8 temperature recorded each 24-hour day shall be used in
9 computing gas volumes. If a recording thermometer is not
10 installed, or if installed and not operating properly, an
11 average flowing temperature of 60 degrees Fahrenheit shall be
12 used in computing gas volume.

13 (3) The specific gravity of the gas shall be determined
14 annually by tests made by the use of an Edwards or Acme
15 gravity balance, or at intervals as found necessary in
16 practice. Specific gravity determinations shall be used in
17 computing gas volumes.

18 (4) The deviation of the natural gas from Boyle's Law
19 shall be determined by annual tests or at other shorter
20 intervals as found necessary in practice. The apparatus and
21 method used in making the test shall be in accordance with
22 recommendations of the National Bureau of Standards or Report
23 No. 3 of the Gas Measurement Committee of the American Gas
24 Association, or amendments thereto. The results of the tests
25 shall be used in computing the volume of gas delivered under
26 this article.

27 "Wellhead meter." A meter placed at a producing or
28 nonproducing site to measure the volume of natural gas severed
29 for which a wellhead meter certification has been issued.

30 "Wellhead meter certification." A report issued by an

1 accredited laboratory certifying the accuracy of a wellhead
2 meter.

3 Section 2203. Imposition of tax.

4 (a) Establishment.--There is levied a natural gas severance
5 tax on every producer.

6 (b) Rate.--The tax imposed in subsection (a) shall be 5% of
7 the gross value of units severed at the wellhead during a
8 reporting period, plus 4.7 cents per unit severed, but shall not
9 be imposed on units severed from a stripper well.

10 Section 2204. Return and payment.

11 (a) Requirement.--Every producer is required to file a
12 return with the department, on a form to be prescribed by the
13 department, reporting all severed natural gas per reporting
14 period and the tax due under section 2203.

15 (a.1) Additional information.--The department may require
16 information necessary for compliance with the act of December
17 19, 1984 (P.L.1140, No.223), known as the Oil and Gas Act, on
18 the returns required under this section or the applications
19 required under section 2205. Information on the returns or
20 applications may be provided to the Department of Environmental
21 Protection.

22 (a.2) Other required submissions by applicant.--

23 (1) An applicant for the grant, renewal or transfer of a
24 permit issued under section 201 of the Oil and Gas Act shall
25 provide to the Department of Environmental Protection, upon
26 forms approved by the department, the following:

27 (i) The applicant's State personal income tax
28 identification number.

29 (ii) The applicant's State sales tax number.

30 (iii) The applicant's State corporation tax number.

1 (iv) The applicant's State employer withholding tax
2 number.

3 (v) The applicant's unemployment compensation
4 account number.

5 (vi) A statement that:

6 (A) State tax reports have been filed and State
7 taxes paid;

8 (B) State taxes are subject to a timely
9 administrative or judicial appeal; or

10 (C) State taxes are subject to a duly approved
11 deferred payment plan.

12 (2) An applicant for the grant, renewal or transfer of a
13 permit referred to in paragraph (1) issued shall, by the
14 filing of an application as it relates to the Department of
15 Environmental Protection waive confidentiality regarding
16 State tax information regarding the application in the
17 possession of the department, the Office of Attorney General
18 or the Department of Labor and Industry, regardless of the
19 source of that information and shall consent to the providing
20 of the information to the board by the department, the Office
21 of Attorney General or the Department of Labor and Industry.

22 (3) Upon receipt of an application for the grant,
23 renewal or transfer of a permit referred to in paragraph (1),
24 the Department of Environmental Protection shall review the
25 State tax status of the applicant. The Department of
26 Environmental Protection shall request State tax information
27 regarding the applicant from the department, the Office of
28 Attorney General or the Department of Labor and Industry and
29 said information shall be provided.

30 (4) The Department of Environmental Protection shall not

1 approve an application for the grant, renewal or transfer of
2 a license issued under this article where the applicant has
3 failed to:

4 (i) provide the information required by paragraph
5 (1);

6 (ii) file required State tax reports; or

7 (iii) pay State taxes not subject to a timely
8 administrative or judicial appeal or subject to a duly
9 authorized deferred payment plan.

10 (5) For the purpose of this section, the term
11 "applicant" shall include the transferor and transferee of a
12 permit referred to in paragraph (1).

13 (6) Upon the required submission of the permit fee or
14 upon issuance or transfer of any permit referred to in
15 paragraph (1), if the department or the Department of Labor
16 and Industry notifies the board of noncompliance with the
17 provisions of this subsection, the board shall not issue or
18 transfer the permit. An appeal filed therefrom shall not act
19 as a supersedeas.

20 (7) This section shall also be applicable to a
21 management company utilized by the applicant.

22 (b) Filing.--The return required by subsection (a) shall be
23 filed with the department within 15 days following the end of
24 the second calendar month after a reporting period.

25 (c) Deadline.--The tax imposed under section 2203 is due on
26 the day the return is required to be filed and becomes
27 delinquent if not remitted to the department by that date.

28 Section 2205. Natural gas severance tax registration.

29 (a) Application.--Before a producer severs natural gas in
30 this Commonwealth, the producer shall apply to the department

1 for a natural gas severance tax registration certificate.

2 (a.1) Application fee.--The department may charge an
3 application fee to cover the administrative costs associated
4 with the application and registration process. If the department
5 charges an application fee, the department shall not issue a
6 registration certificate until the producer has paid the
7 application fee.

8 (a.2) Declaration.--The producer shall include in its
9 application a declaration of all sites in this Commonwealth used
10 by the producer for the severance of natural gas. The
11 declaration is to include all producing sites and nonproducing
12 sites as well as wellhead meter certification for each. The
13 producer is required to update the declaration when the producer
14 adds or removes a producing site or nonproducing site in this
15 Commonwealth or when there is a change in the status of a
16 producing site or nonproducing site or when the producer uses a
17 different accredited laboratory to certify the accuracy of the
18 producer's wellhead meters. The producer shall update the
19 declaration within 30 days after a calendar month in which a
20 change to the declaration occurs.

21 (b) Issuance.--Except as provided in subsection (c), after
22 the receipt of an application, the department shall issue a
23 registration certificate under subsection (a). The registration
24 certificate shall be nonassignable. All registrants shall be
25 required to renew their registration certificates and wellhead
26 meter certifications on a staggered renewal system established
27 by the department. After the initial staggered renewal period, a
28 registration certificate or a wellhead meter certification
29 issued shall be valid for a period of five years.

30 (c) Refusal, suspension or revocation.--The department may

1 refuse to issue, suspend or revoke a registration certificate if
2 the applicant or registrant has not filed required State tax
3 reports and paid State taxes not subject to a timely perfected
4 administrative or judicial appeal or subject to a duly
5 authorized deferred payment plan. The department shall notify
6 the applicant or registrant of any refusal, suspension or
7 revocation. The notice shall contain a statement that the
8 refusal, suspension or revocation may be made public. The notice
9 shall be made by first class mail. An applicant or registrant
10 aggrieved by the determination of the department may file an
11 appeal under the provisions for administrative appeals of this
12 act. In the case of a suspension or revocation which is
13 appealed, the registration certificate shall remain valid
14 pending a final outcome of the appeals process. Notwithstanding
15 sections 274, 353(f), 408(b), 603, 702, 802, 904 and 1102 or any
16 other provision of law, if no appeal is taken or if an appeal is
17 taken and denied at the conclusion of the appeal process the
18 department may disclose, by publication or otherwise, the
19 identity of a producer and the fact that the producer's
20 registration certificate has been refused, suspended or revoked
21 under this subsection. Disclosure may include the basis for
22 refusal, suspension or revocation.

23 (d) Violation.--A person severing natural gas in this
24 Commonwealth without holding a valid registration certificate
25 under subsection (b) shall be guilty of a summary offense and
26 shall, upon conviction, be sentenced to pay a fine of not less
27 than \$300 nor more than \$1,500. In the event the person
28 convicted defaults, he shall be sentenced to imprisonment for
29 not less than five days nor more than 30 days. The penalties
30 imposed by this subsection shall be in addition to any other

1 penalties imposed by this article. For purposes of this
2 subsection, the severing of natural gas during any calendar day
3 shall constitute a separate violation. The Secretary of Revenue
4 may designate employees of the department to enforce the
5 provisions of this subsection. The employees shall exhibit proof
6 of and be within the scope of the designation when instituting
7 proceedings as provided by the Pennsylvania Rules of Criminal
8 Procedure.

9 (e) Failure to obtain registration certificate.--Failure to
10 obtain or hold a valid registration certificate does not relieve
11 a person from liability for the tax imposed by this article.

12 Section 2205.1. Meters.

13 A producer shall provide for and maintain a discrete wellhead
14 meter and a discrete sales meter. A producer shall ensure that
15 the meters are maintained according to industry standards. Any
16 wellhead meter installed after the effective date of this
17 section shall be a digital meter.

18 Section 2206. Assessments.

19 (a) Authorization and requirement.--The department is
20 authorized and shall make the inquiries, determinations and
21 assessments of the natural gas severance tax, including
22 interest, additions and penalties imposed under this article.

23 (b) Notice.--The notice of assessment and demand for payment
24 shall be mailed to the taxpayer. The notice shall set forth the
25 basis of the assessment. The department shall send the notice of
26 assessment to the taxpayer at its registered address via
27 certified mail if the assessment increases the taxpayer's tax
28 liability by \$300. Otherwise, the notice of assessment may be
29 sent via regular mail.

30 Section 2207. Time for assessment.

1 (a) Requirement.--An assessment as provided under section
2 2206 shall be made within three years after the date when the
3 return provided for by section 2204 is filed or the end of the
4 year in which the tax liability arises, whichever shall occur
5 last. For the purposes of this subsection and subsection (b), a
6 return filed before the last day prescribed for the filing
7 period shall be considered as filed on the last day.

8 (b) Exception.--If the taxpayer underpays the correct amount
9 of the tax due by 25% or more, the tax may be assessed within
10 six years after the date the return was filed.

11 (c) Intent to evade.--Where no return is filed or where the
12 taxpayer files a false or fraudulent return with intent to evade
13 the tax imposed by this article, the assessment may be made at
14 any time.

15 (d) Erroneous credit or refund.--Within three years of the
16 granting of a refund or credit or within the period in which an
17 assessment or reassessment may have been issued by the
18 department for the taxable period for which the refund was
19 granted, whichever period shall last occur, the department may
20 issue an assessment to recover a refund or credit made or
21 allowed erroneously.

22 Section 2208. Extension of limitation period.

23 Notwithstanding the provisions of this article, the
24 assessment period may be extended in the event a taxpayer has
25 provided written consent before the expiration of the period
26 provided in section 2207 for a tax assessment. The amount of tax
27 due may be assessed at any time within the extended period. The
28 period may be extended further by subsequent written consents
29 made before the expiration of the extended period.

30 Section 2209. Reassessments.

1 A taxpayer against whom an assessment is made may petition
2 the department for a reassessment under Article XXVII.
3 Section 2210. Interest.

4 The department shall assess interest on any delinquent tax at
5 the rate prescribed under section 806 of the act of April 9,
6 1929 (P.L.343, No. 176), known as The Fiscal Code.
7 Section 2211. Penalties.

8 The department shall enforce the following penalties:

9 (1) A penalty against a valid producer without a natural
10 gas severance tax registration certificate. The penalty shall
11 be \$1 for every unit severed without a valid registration
12 certificate. The department may assess this penalty
13 separately from or in conjunction with any assessment of the
14 natural gas severance tax.

15 (2) A penalty against a producer for failure to timely
16 file a return as required under section 2204. The penalty
17 shall be 5% of the tax liability to be reported on the return
18 for each day beyond the due date that the return is not
19 filed.

20 (3) In addition to the penalty under paragraph (2), a
21 penalty against the producer for a willful failure to timely
22 file a return. The penalty shall be 200% of the tax liability
23 required to be reported on the return.

24 (4) A penalty against a producer for failure to timely
25 pay the tax as required by section 2204(c). The penalty shall
26 be 5% of the amount of tax due for each day beyond the
27 payment date that the tax is not paid.

28 Section 2212. Criminal acts.

29 (a) Fraudulent return.--Any person with intent to defraud
30 the Commonwealth, who willfully makes or causes to be made a

1 return required by this article which is false, is guilty of a
2 misdemeanor and shall, upon conviction, be sentenced to pay a
3 fine of not more than \$2,000 or to imprisonment for not more
4 than three years, or both.

5 (b) Other crimes.--

6 (1) Except as otherwise provided by subsection (a), a
7 person is guilty of a misdemeanor and shall, upon conviction,
8 be sentenced to pay a fine of not more than \$1,000 and costs
9 of prosecution or to imprisonment for not more than one year,
10 or both, for any of the following:

11 (i) Willfully failing to timely remit the tax to the
12 department.

13 (ii) Willfully failing or neglecting to timely file
14 a return or report required by this article.

15 (iii) Refusing to timely pay a tax, penalty or
16 interest imposed or provided for by this article.

17 (iv) Willfully failing to preserve its books, papers
18 and records as directed by the department.

19 (v) Refusing to permit the department or its
20 authorized agents to examine its books, records or
21 papers.

22 (vi) Knowingly make any incomplete, false or
23 fraudulent return or report.

24 (vii) Preventing or attempting to prevent the full
25 disclosure of the amount of natural gas severance tax
26 due.

27 (viii) Providing any person with a false statement
28 as to the payment of natural gas severance tax with
29 respect to any pertinent facts.

30 (ix) Making, uttering or issuing a false or

1 fraudulent statement.

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

4 Section 2213. Abatement of additions or penalties.

5 Upon the filing of a petition for reassessment or a petition
6 for refund by a taxpayer as provided under this article,
7 additions or penalties imposed upon the taxpayer by this article
8 may be waived or abated in whole or in part where the petitioner
9 establishes that he acted in good faith, without negligence and
10 with no intent to defraud.

11 Section 2214. Bulk and auction sales.

12 A person that sells or causes to be sold at auction, or that
13 sells or transfers in bulk, 51% or more of a stock of goods,
14 wares or merchandise of any kind, fixtures, machinery,
15 equipment, buildings or real estate involved in a business for
16 which the person holds a registration certificate or is required
17 to obtain a registration certificate under the provisions of
18 this article shall be subject to the provisions of section 1403
19 of the act of April 9, 1929 (P.L.343, No.176), known as The
20 Fiscal Code.

21 Section 2215. Collection upon failure to request reassessment,
22 review or appeal.

23 (a) Power of department.--The department may collect the
24 natural gas severance tax:

25 (1) If an assessment of the tax is not paid within 30
26 days after notice to the taxpayer when no petition for
27 reassessment has been filed.

28 (2) Within 60 days of the reassessment, if no petition
29 for review has been filed.

30 (3) If no appeal has been made, within 30 days of:

1 (i) the Board of Finance and Revenue's decision of a
2 petition for review; or

3 (ii) the expiration of the board's time for acting
4 upon the petition.

5 (4) In all cases of judicial sales, receiverships,
6 assignments or bankruptcies.

7 (b) Prohibition.--In a case for the collection of taxes
8 under subsection (a), the taxpayer against whom they were
9 assessed shall not be permitted to set up a ground of defense
10 that might have been determined by the department, the Board of
11 Finance and Revenue or the courts, provided that the defense of
12 failure of the department to mail notice of assessment or
13 reassessment to the taxpayer and the defense of payment of
14 assessment or reassessment may be raised in proceedings for
15 collection by a motion to stay the proceedings.

16 Section 2216. Tax liens.

17 (a) Lien imposed.--If any taxpayer neglects or refuses to
18 pay the natural gas severance tax for which the taxpayer is
19 liable under this article after demand, the amount, including
20 interest, addition or penalty, together with additional costs
21 that may accrue, shall be a lien in favor of the Commonwealth
22 upon the real and personal property of the taxpayer but only
23 after the same has been entered and docketed of record by the
24 prothonotary of the county where the property is situated. The
25 department may, at any time, transmit to the prothonotaries of
26 the respective counties certified copies of all liens imposed by
27 this section. It shall be the duty of the prothonotary receiving
28 the lien to enter and docket the same of record to the office of
29 the prothonotary. The lien shall be indexed as judgments are now
30 indexed. No prothonotary shall require as a condition precedent

1 to the entry of the lien the payment of costs incidental to its
2 entry.

3 (b) Priority of lien and effect on judicial sale.--Except
4 for the costs of the sale and the writ upon which the sale was
5 made and real estate taxes and municipal claims against the
6 property, a lien imposed under this section shall have priority
7 from the date of its recording and shall be fully paid and
8 satisfied out of the proceeds of any judicial sale of property
9 subject to the lien, before any other obligation, judgment,
10 claim, lien or estate to which the property may subsequently
11 become subject, but shall be subordinate to mortgages and other
12 liens existing and duly recorded or entered of record prior to
13 the recording of the lien.

14 (c) No discharge by sale on junior lien.--In the case of a
15 judicial sale of property subject to a lien imposed under this
16 section, upon a lien or claim over which the lien imposed under
17 this section has priority, the sale shall discharge the lien
18 imposed under this section to the extent only that the proceeds
19 are applied to its payment, and the lien shall continue in full
20 force and effect as to the balance remaining unpaid. There shall
21 be no inquisition or condemnation upon any judicial sale of real
22 estate made by the Commonwealth under the provisions of this
23 article. The lien shall continue as provided in the act of April
24 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and a writ
25 of execution may directly issue upon the lien without the
26 issuance and prosecution to judgment of a writ of scire facias,
27 provided that not less than ten days before issuance of any
28 execution on the lien, notice of the filing and the effect of
29 the lien shall be sent by registered mail to the taxpayer at its
30 last known post office address, provided further that the lien

1 shall have no effect upon any stock of goods, wares or
2 merchandise regularly sold or leased in the ordinary course of
3 business by the taxpayer against whom the lien has been entered,
4 unless and until a writ of execution has been issued and a levy
5 made upon said stock of goods, wares and merchandise.

6 (d) Duty of prothonotary.--Any willful failure of any
7 prothonotary to carry out any duty imposed upon him by this
8 section shall be a misdemeanor. Upon conviction, he shall be
9 sentenced to pay a fine of not more than \$1,000 and costs of
10 prosecution or to imprisonment for not more than one year, or
11 both.

12 (e) Priority.--Except as provided in this article, the
13 distribution, voluntary or compulsory, in receivership,
14 bankruptcy or otherwise of the property or estate of any person,
15 all taxes imposed by this article which are due and unpaid and
16 are not collectible under the provisions of section 225, shall
17 be paid from the first money available for distribution in
18 priority to all other claims and liens, except as the laws of
19 the United States may give priority to a claim to the Federal
20 Government. A person charged with the administration or
21 distribution of the property or estate who violates the
22 provisions of this section shall be personally liable for the
23 taxes imposed by this article which are accrued and unpaid and
24 chargeable against the person whose property or estate is being
25 administered or distributed.

26 (f) Other remedies.--Subject to the limitations contained in
27 this article as to the assessment of taxes, nothing contained in
28 this section shall be construed to restrict, prohibit or limit
29 the use by the department in collecting taxes due and payable of
30 another remedy or procedure available at law or equity for the

1 collection of debts.

2 Section 2217. Tax suit reciprocity.

3 The courts of this Commonwealth shall recognize and enforce
4 liabilities for natural gas severance taxes lawfully imposed by
5 any other state, provided that the other state recognizes and
6 enforces the tax set forth in this article.

7 Section 2218. Service.

8 A producer is deemed to have appointed the Secretary of the
9 Commonwealth its agent for the acceptance of service of process
10 or notice in a proceeding for the enforcement of the civil
11 provisions of this article and service made upon the Secretary
12 of the Commonwealth as agent shall be of the same legal force
13 and validity as if the service had been personally made upon the
14 producer. Where service cannot be made upon the producer in the
15 manner provided by other laws of this Commonwealth relating to
16 service of process, service may be made upon the Secretary of
17 the Commonwealth. In that case, a copy of the process or notice
18 shall be personally served upon any agent or representative of
19 the producer who may be found within this Commonwealth or, where
20 no agent or representative may be found, a copy of the process
21 or notice shall be sent via registered mail to the producer at
22 the last known address of its principal place of business, home
23 office or residence.

24 Section 2219. Refunds.

25 Under Article XXVII, the department shall refund all taxes,
26 interest and penalties paid to the Commonwealth under the
27 provisions of this article to which the Commonwealth is not
28 rightfully entitled. The refunds shall be made to the person or
29 the person's heirs, successors, assigns or other personal
30 representatives who paid the tax, provided that no refund shall

1 be made under this section regarding a payment made by reason of
2 an assessment where a taxpayer has filed a petition for
3 reassessment under section 2702 to the extent the petition is
4 adverse to the taxpayer by a decision which is no longer subject
5 to further review or appeal. Nothing in this article shall
6 prohibit a taxpayer who has filed a timely petition for
7 reassessment from amending it to a petition for refund where the
8 petitioner paid the tax assessed.

9 Section 2220. Refund petition.

10 (a) General rule.--Except as provided for in subsection (b),
11 the refund or credit of tax, interest or penalty provided for by
12 section 2219 shall be made only where the person who has paid
13 the tax files a petition for refund with the department under
14 Article XXVII, within the time limits of section 3003.1.

15 (b) Natural gas severance tax.--A refund or credit of tax,
16 interest or penalty paid as a result of an assessment made by
17 the department under section 2205 shall be made only where the
18 person who has paid the tax files with the department a petition
19 for a refund with the department under Article XXVII within the
20 time limits of section 3003.1. The filing of a petition for
21 refund, under the provisions of this subsection, shall not
22 affect the abatement of interest, additions or penalties to
23 which the person may be entitled by reason of his payment of the
24 assessment.

25 Section 2221. Rules and regulations.

26 The department is charged with the enforcement of the
27 provisions of this article and is authorized and empowered to
28 prescribe, adopt, promulgate and enforce rules and regulations
29 not inconsistent with the provisions of this article relating to
30 any matter or thing pertaining to the administration and

enforcement of the provisions of this article and the collection of taxes, penalties and interest imposed by this article. The department may prescribe the extent, if any, to which any of the rules and regulations shall be applied without retroactive effect.

Section 2222. Recordkeeping.

(a) General rule.--Every person liable for any tax imposed by this article, or for the collection of such tax, shall keep records, including those enumerated in subsection (b), render statements, make returns and comply with the rules and regulations as the department may prescribe regarding matters pertinent to the person's business. Whenever it is necessary, the department may require a person, by notice served upon the person or by regulations, to make returns, render statements or keep records as the department deems sufficient to show whether or not a person is liable to pay tax under this article.

(a.1) Records.--Records to be maintained are:

(1) Wellhead meter and sales meter charts for each reporting period and the meter calibration and maintenance records. If turbine meters are in use, the maintenance records will be made available to the department upon request.

(2) Records, statements and other instruments furnished to a producer by a person to whom the producer delivers for sale, transport or delivery of natural gas.

(3) Records, statements and other instruments as the department may prescribe by regulation.

(b) Records of nonresidents.--A nonresident who does business in this Commonwealth as a producer shall keep adequate records of the business and of the tax due as a result. The

records shall be retained within this Commonwealth unless
retention outside this Commonwealth is authorized by the
department. The department may require a taxpayer who desires to
retain records outside this Commonwealth to assume reasonable
out-of-State audit expenses.

(c) Keeping of separate records.--A producer who is engaged
in another business or businesses which do not involve the
severing of natural gas taxable under this article, shall keep
separate books and records of the businesses so as to show the
taxable severing of natural gas under this article separately
from other business activities not taxable hereunder. If any
person fails to keep separate books and records, the person
shall be liable for a penalty equaling 100% of tax due under
this article for the period where separate records were not
maintained.

Section 2223. Examinations.

The department or any of its authorized agents are authorized
to examine the books, papers and records of any taxpayer in
order to verify the accuracy and completeness of any return made
or, if no return was made, to ascertain and assess the tax
imposed by this article. The department may require the
preservation of all books, papers and records for any period
deemed proper by it but not to exceed three years from the end
of the calendar year to which the records relate. Every taxpayer
is required to give to the department or its agent the means,
facilities and opportunity for examinations and investigation
under this section. The department is further authorized to
examine any person, under oath, concerning the taxable severing
of natural gas by any taxpayer or concerning any other matter
relating to the enforcement or administration of this article,

1 and to this end may compel the production of books, papers and
2 records and the attendance of all persons whether as parties or
3 witnesses whom it believes to have knowledge of relevant
4 matters. The procedure for the hearings or examinations shall be
5 the same as that provided by the act of April 9, 1929 (P.L.343,
6 No. 176), known as The Fiscal Code.

7 Section 2224. Unauthorized disclosure.

8 Any information gained by the department as a result of any
9 return, examination, investigation, hearing or verification
10 required or authorized by this article shall be confidential
11 except for official purposes and except in accordance with
12 proper judicial order or as otherwise provided by law, and any
13 person unlawfully divulging the information shall be guilty of a
14 misdemeanor and shall, upon conviction, be sentenced to pay a
15 fine of not more than \$1000 and costs of prosecution or to
16 imprisonment for not more than one year, or both.

17 Section 2225. Cooperation with other governments.

18 Notwithstanding the provisions of section 2217, the
19 department may permit the Commissioner of the Internal Revenue
20 Service of the United States, the proper officer of any state or
21 the authorized representative of either of them to inspect the
22 tax returns of any taxpayer, or may furnish to the commissioner
23 or officer or to either of their authorized representative an
24 abstract of the return of any taxpayer, or supply him with
25 information concerning any item contained in any return or
26 disclosed by the report of any examination or investigation of
27 the return of any taxpayer. This permission shall be granted
28 only if the laws of the United States or another state grant
29 substantially similar privileges to the proper officer of the
30 Commonwealth charged with the administration of this article.

1 Section 2226. Bonds.

2 (a) Taxpayer to file bond.--The department may require a
3 nonresident natural person or any foreign corporation,
4 association, fiduciary or other entity, not authorized to do
5 business within this Commonwealth or not having an established
6 place of business in this Commonwealth and subject to the tax
7 imposed by section 2203, to file a bond issued by a surety
8 company authorized to do business in this Commonwealth and
9 approved by the Insurance Commissioner as to solvency and
10 responsibility, in amounts as it may fix, to secure the payment
11 of any tax or penalties due or which may become due from a
12 nonresident natural person, corporation, association, fiduciary
13 or other entity whenever it deems it necessary to protect the
14 revenues obtained under this article. The department may also
15 require a bond of a person petitioning the department for
16 reassessment in the case of any assessment over \$500 or where,
17 in its opinion, the ultimate collection is in jeopardy. For a
18 period of three years, the department may require a bond of any
19 person who has, on three or more occasions within a 12-month
20 period, either filed a return or made payment to the department
21 more than 30 days late. In the event the department determines a
22 taxpayer is required to file a bond, it shall give notice to the
23 taxpayer specifying the amount of the bond required. The
24 taxpayer shall file the bond within five days after notice is
25 given by the department unless, within five days, the taxpayer
26 shall request in writing a hearing before the Secretary of
27 Revenue or his representative. At the hearing, the necessity,
28 propriety and amount of the bond shall be determined by the
29 secretary or the secretary's representative. The determination
30 shall be final and the taxpayer shall comply with it within 15

1 days after notice is mailed to the taxpayer.

2 (b) Securities in lieu of bond.--In lieu of the bond
3 required by this section securities approved by the department
4 or cash in a prescribed amount may be deposited. The securities
5 or cash shall be kept in the custody of the department. The
6 department may apply the securities or cash to the tax imposed
7 by this article and interest or penalties due without notice to
8 the depositor. The securities may be sold by the department to
9 pay the tax and/or interest or penalties due at public or
10 private sale upon five days' written notice to the depositor.

11 (c) Failure to file bond.--The department may file a lien
12 under section 2216 against any taxpayer who fails to file a bond
13 when required to do so under this section. All funds received
14 upon execution of the judgment on the lien shall be refunded to
15 the taxpayer with 3% interest, should a final determination be
16 made that it does not owe any payment to the department.

17 Section 2227. Revenue deposits and distributions.

18 (a) Deposit.--

19 (1) Until June 30, 2011, 90% of the proceeds of the
20 natural gas severance tax, penalties and interest imposed by
21 this article, less the amounts appropriated under section
22 2228, shall be deposited into the Stimulus Transition Reserve
23 Fund established under section 3003.22. On July 1, 2011, and
24 thereafter, the proceeds shall be deposited into the General
25 Fund.

26 (2) Ten percent of the proceeds of the natural gas
27 severance tax, penalties and interest imposed by this
28 article, less the amounts appropriated under section 2228,
29 shall be deposited into a restricted receipts account
30 established within the Stimulus Transition Reserve Fund until

1 June 30, 2011. On July 1, 2011, and thereafter, the 10% of
2 the proceeds shall be deposited into a restricted receipts
3 account established within the General Fund.

4 (b) Distributions.--

5 (1) Fifty percent of the funds in the restricted
6 receipts account established under subsection (a) shall be
7 distributed to municipalities where natural gas has been
8 severed and taxed under this article. The amount distributed
9 shall be determined on a pro rata basis as follows: The total
10 amount to be distributed under this paragraph is divided by
11 the total number of taxable gas units severed in this
12 Commonwealth; this quotient is then multiplied by the total
13 number of taxable gas units severed in the municipality. The
14 result equals the amount of money to be distributed to the
15 municipality, which shall be used solely for any of the
16 following:

17 (i) Reconstruction, maintenance and repair of
18 municipal roadways and bridges which the municipality has
19 determined have been or are being used extensively to
20 transport natural gas or equipment related to the
21 production thereof.

22 (ii) Parks and recreation.

23 (iii) Industrial and commercial development.

24 (iv) Preservation and improvement of municipal water
25 supplies.

26 (v) Maintenance and capital improvements to the
27 municipal waste and sewage systems.

28 (vi) Preservation and reclamation of the surface
29 waters of the municipality.

30 (vii) Other lawful purposes reasonably related to

1 the consequences of severing natural gas in the
2 municipality.

3 (2) Fifty percent of the funds in the restricted
4 receipts account established under subsection (a)(2) shall be
5 distributed to counties where natural gas has been severed
6 and taxed under this article. The amount distributed to a
7 county shall be determined on a pro rata basis as follows:
8 The total amount to be distributed under this paragraph is
9 divided by the total number of taxable gas units severed in
10 this Commonwealth; this quotient is then multiplied by the
11 total number of taxable gas units severed in the county. The
12 result equals the amount of money to be distributed to the
13 county, which shall be administered by a board comprised of
14 the chairperson of the board of county commissioners, a
15 representative from the natural gas producing municipalities
16 within the county and a county commissioner selected by the
17 representative of the natural gas producing municipalities.
18 The board shall give priority to the reconstruction, repair
19 and maintenance of county roadways and bridges determined by
20 the board to have been and are being used to transport
21 natural gas or equipment related to the production thereof
22 and may allocate the remainder to the county or its
23 municipalities for any of the purposes enumerated in
24 paragraph (1). A simple majority vote of all the members of
25 the board shall be required for any action under this
26 paragraph.

27 (3) The transfers in paragraphs (1) and (2) shall occur
28 semiannually. The transfer in April will be tax revenue from
29 gas severed from July to October. The transfer in October
30 will be tax revenue from gas severed from January to July.

1 Section 2228. Appropriation.

2 The amount of the proceeds from the tax imposed by this
3 article as shall be necessary for the payment of refunds,
4 enforcement or administration under this article, is hereby
5 appropriated for such purposes.

6 Section 5. Section 3003.3(d) of the act, amended October 18,
7 2006 (P.L.1149, No.119), is amended and the section is amended
8 by adding subsections to read:

9 Section 3003.3. Underpayment of Estimated Tax.--* * *

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

1 required to be paid to the date the amount required to be paid
2 per the preceding sentence is paid. Provided, that if the total
3 tax for the safe harbor base year exceeds the tax shown on such
4 report by ten per cent or more, the total tax adjusted to
5 reflect the current tax rate shall be used for purposes of this
6 subsection. In the event that the total tax for the safe harbor
7 base year exceeds the tax shown on the report by ten per cent or
8 more, interest resulting from the utilization of such total tax
9 in the application of the provisions of this subsection shall
10 not be imposed if, within forty-five days of the mailing date of
11 each assessment, payments are made such that the total amount of
12 all payments of estimated tax 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 total tax adjusted
15 to reflect the current tax rate. In any case in which the
16 taxable year for which an underpayment of estimated tax may
17 exist is a short taxable year, in determining the tax shown on
18 the report or the total tax for the safe harbor base year, the
19 tax will be reduced by multiplying it by the ratio of the number
20 of installment payments made in the short taxable year to the
21 number of installment payments required to be made for the full
22 taxable year.

23 (d.1) (1) Notwithstanding the provisions of subsections
24 (a), (b) and (c), interest with respect to any underpayment of
25 any installment of estimated corporate net income tax for any
26 tax year that begins in year 2011 or 2012 shall not be imposed
27 if the total amount of all payments of estimated corporate net
28 income tax made on or before the last date prescribed for the
29 payment of such installment equals or exceeds the amount which
30 would have been required to be paid on or before such date if

1 the estimated tax were an amount equal to the tax shown on the
2 report of the taxpayer for the safe harbor base year, if a
3 report showing a liability for tax was filed by the taxpayer for
4 the safe harbor base year.

5 (2) If the total amount of all payments of estimated tax
6 made on or before the last date prescribed for the payment of
7 such installment does not equal or exceed the amount required to
8 be paid under paragraph (1), but such amount is paid after the
9 date the installment was required to be paid, then the period of
10 underpayment shall run from the date the installment was
11 required to be paid to the date the amount required to be paid
12 under paragraph (1) is paid.

13 (3) If the total tax for the safe harbor base year exceeds
14 the tax shown on such report by ten per cent or more, the total
15 tax shall be used for purposes of this subsection. In the event
16 that the total tax for the safe harbor base year exceeds the tax
17 shown on the report by ten per cent or more, interest resulting
18 from the utilization of the total tax in the application of the
19 provisions of this subsection shall not be imposed if, within
20 forty-five days of the mailing date of a notice from the
21 department increasing the total tax, payments are made such that
22 the total amount of all payments of estimated tax equals or
23 exceeds the amount which would have been required to be paid on
24 or before such date if the estimated tax were an amount equal to
25 the total tax.

26 (4) In any case in which the taxable year for which an
27 underpayment of estimated tax may exist is a short taxable year,
28 in determining the tax shown on the report or the total tax for
29 the safe harbor base year, the tax shall be reduced by
30 multiplying it by the ratio of the number of installment

1 payments made in the short taxable year to the number of
2 installment payments required to be made for the full taxable
3 year.

4 (d.2) (1) If there is a substantial underpayment, as
5 defined in subsection (a), of any installment of estimated
6 corporate net income tax or estimated capital stock/franchise
7 tax for any taxable year beginning in 2011 or 2012, there shall
8 be imposed additional interest in an amount determined at one
9 hundred twenty per cent of the annual rate as provided by law
10 upon the entire underpayment for the period of the substantial
11 underpayment.

12 (2) The additional interest imposed by this subsection is in
13 addition to any other interest imposed on underpayments by this
14 section.

15 Section 6. The amendment or addition of the following
16 provisions shall apply to taxable years beginning after December
17 31, 2010:

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

20 (2) Section 402 of the act.

21 (3) Section 403(a.1), (a.2), (a.3), (a.4) and (a.5) of
22 the act.

23 (4) Section 404 of the act.

24 (5) Section 3003.3(d), (d.1) and (d.2) of the act.

25 Section 7. The repeal of section 227 of the act shall apply
26 to all returns due on or after July 1, 2010.

27 Section 8. This act shall take effect as follows:

28 (1) This section and the repeal of section 227 of the
29 act shall take effect immediately.

30 (2) The addition of Article XXII of the act shall take

1 effect July 1, 2010, or immediately, whichever is later.

2 (3) The remainder of this act shall take effect July 1,
3 2011, or immediately, whichever is later.