Veto No. 1988-3

SB 345 October 21, 1988

To the Honorable, the Senate
of the Commonwealth of Pennsylvania:

I return herewith, without my approval, Senate Bill 345, Printer's Number 2449, entitled "An act amending the act of March 4, 1971 (P.L.6, No.2), entitled 'An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties,' further providing for certain corporate taxes; providing for the exclusion of construction of hydroelectric generating facilities from the tax on utilities; and further providing for the realty transfer tax."

Senate Bill 345 amends the Tax Reform Code to allow three exemptions from the Realty Transfer Tax, and an exemption is added to the Public Utility Realty Tax for the construction phase of hydroelectric facilities. An exemption is added to the definition of passive income under the Personal Income Tax in order that options or commodities dealers or equity specialists may become Subchapter-S corporations for Pennsylvania tax purposes.

Senate Bill 345 removes from the definition of taxable value for the purposes of the Realty Transfer Tax the value of any executory agreement for future improvements in effect at the time of transfer. The bill also provides exemptions from the Realty Transfer Tax for transfers between members of the same family of an interest in a family farm or from a member of a family farm partnership. In addition, the bill exempts transfers from a conservancy organization to any governmental agency.

Provisions of Senate Bill 345 also amend the Public Utility Realty Tax (PURTA) to provide an exemption from the tax for the construction period of a hydroelectric facility effective January 1, 1990, and applicable to construction periods after January 1, 1987. Current law provides for a ten-year exemption from the tax from the start of operation.

Senate Bill 345 also amends the definition of "small corporation" to exclude income earned by options or commodities dealers or equity specialists from the definition of passive investment income. Passive income is limited to 25% in order to qualify as a Subchapter-S corporation. The effect of corporation Subchapter-S election on State tax revenues is to exempt these corporations from the Corporate Net Income Tax and to tax the income under the Personal Income Tax rate at about one-fourth the tax rate for corporations.

I cannot approve Senate Bill 345 for the following reasons:

1. Enactment of this bill will result in significant current and future year General Fund revenue losses.

- Provisions relating to the Realty Transfer Tax will result in a fiscal year 1988-1989 General Fund revenue loss of at least $8.2 million due to the retroactive effective date of July 1, 1988. About one-third of the loss is due to refunds.

- The change in the definition of passive investment income will result in future losses of approximately $3 million per fiscal year.

- The PURTA exclusion, with its retroactive provision which requires a refund of taxes, will result in a loss of revenue in the 1989-1990 fiscal year of $300,000 and $700,000 for 1990-1991.

2. Changes in the Realty Transfer Tax statute will result in nonconformity between the State and local tax base for realty tax purposes. Action on the part of local jurisdictions to adopt the State tax base will result in local revenue losses. These reductions in State revenues from the Realty Transfer Tax occur at a time when the Administration and the General Assembly are considering Local Tax Reform legislation which will distribute a portion of this tax money to local jurisdictions.

3. It is questionable whether the PURTA exemption for hydroelectric facilities will provide enhancement of rural development when there is no indication that industry construction plans will be altered because of this exemption. In addition, the exemption period for these facilities is not specifically limited to any time period. While Federal regulation may require that the project be constructed within a three-year time period, there are no provisions in Senate Bill 345 which would make the same limit.

The provisions in this bill which deal with Realty Transfer Tax exemptions for family farm partnership transfers and transfers from a conservancy group to a governmental entity do have merit. I would favor approval of these provisions if they are contained in a separate bill at a later date.

I am herewith returning Senate Bill 345 without my signature.

ROBERT P. CASEY