

Veto No. 2004-5

HB 176

November 30, 2004

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I am returning herewith, without my approval, House Bill 176, Printer's No.4784, entitled "An act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing, in sales and use tax, for alternate imposition and for credits; further providing, in personal income tax, for definitions; providing, in personal income tax, for operational provisions relating to contributions of refunds by checkoff; further providing, in realty transfer tax, for determination and review; providing, in realty transfer tax, for sharing information; further providing, in local real estate transfer tax, for imposition and for administration; providing, in local real estate transfer tax, for regulations, for documentary stamps, for collection agents, for disbursements, for judicial sale proceeds, for stamps, for determination and review, for liens, for refunds, for civil penalties, for violations and for information; further providing, in research and development tax credit, for definitions, for carryover, carryback, refund and assignment of credit and for Pennsylvania S corporation shareholder pass-through; further providing, in film production tax credit, for the definitions of "film," "Pennsylvania production expense" and "production expense"; providing, in film production tax credit, for the definition of "start date"; further providing, in film production tax credit, for credit for qualified film production expenses; providing for film production tax credits; further providing, in film production tax credit, for carryover and refund of credits, for limitations on credits; imposing penalties; providing for findings and declarations; and making repeals."

I am not signing House Bill 176 into law because certain provisions of the legislation are ambiguous and the legislation could result in substantial revenue loss to the General Fund. In particular, while section 2 of the bill may have been intended to exempt only "nonqualifying" deferred compensation plans from State taxation, the language is sufficiently vague to allow the exemption to apply to all deferred compensation plans. Such an interpretation would result in the loss to the General Fund of approximately \$220 million annually. Moreover, the bill can be interpreted as applying retroactively to the original enactment of the Tax Code of 1971, increasing significantly the exposure of the General Fund.

House Bill 176 could result in the loss to the General Fund of \$220 million, or more - and the bill has not been coupled with any proposals as to how the Commonwealth would compensate for this lost revenue - no plans to increase revenues and no specific, delineated proposed spending cuts. As a result, I have no choice but to withhold my signature from this bill. As long as I am Governor, I intend to enforce a "pay as you go" budget process

for Pennsylvania. There will be no significant increases in spending or reductions in revenue without a specific plan to pay for them. Indeed, because of the fiscal impact, tax legislation is appropriately debated during the overall discussions of the Commonwealth budget.

Despite my fundamental problems with the significant fiscal impact of this legislation, I note that House Bill 176 does raise several potential changes that are worthy of further consideration and debate. Among these are the following:

- Addressing consequence of changes to the tax code in 1998 that used section 501 of the Internal Revenue Code as a way of defining corporations organized as not-for-profits for purposes of determining exclusions from Pennsylvania corporate taxes.
- Changing the way our recently enacted film tax credit is calculated and distributed to ensure that it has the maximum impact in helping to attract film production to Pennsylvania. The tax credit for the film industry has already produced tangible results and the new procedures set forth in House Bill 176 would serve to make the credit even more attractive to the film industry.
- Improving and strengthening our recently expanded research and development tax credit to ensure that the program continues to attract new investment in research and development in the Commonwealth.

I would support all of these proposed changes if made in the appropriate context. In its current form, however, I cannot support House Bill 176.

For the reasons set forth above, I must withhold my signature from House Bill 176, Printer's No.4784.

EDWARD G. RENDELL