

No. 1987-58

AN ACT

SB 443

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," adding an exclusion from sales and use tax; further providing for special provisions for poverty; further providing for capitol stock franchise tax; creating a Hazardous Sites Cleanup Fund; reducing the utilities gross receipts tax; and further providing for prepayment of capital stock tax.

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

Section 1. Section 204 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding a clause to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon

* * *

(46) The sale at retail or use of tangible personal property purchased in accordance with the Food Stamp Act of 1977, as amended (Public Law 95-113, 7 U.S.C. §§ 2011-2029).

Section 2. Section 304(d)(1) of the act, added March 13, 1974 (P.L.179, No.32), is amended to read:

Section 304. Special Tax Provisions for Poverty.—* * *

(d) Any claim for special tax provisions hereunder shall be determined in accordance with the following:

(1) If the poverty income of the claimant during an entire taxable year is **[three thousand dollars (\$3,000)]** *four thousand five hundred dollars (\$4,500)* or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of **[twelve hundred dollars (\$1200)]** *one thousand five hundred dollars (\$1,500)* for the first additional dependent and an additional income allowance of **[seven hundred fifty dollars (\$750)]** *one thousand dollars (\$1,000)* for each additional dependent of the claimant.

* * *

Section 3. The definition of "capital stock value" in section 601(a) of the act, amended July 2, 1986 (P.L.318, No.77), is amended to read:

Section 601. Definitions and Reports.—(a) The following words, terms and phrases when used in this Article VI shall have the meaning ascribed to them in this section, except where the context clearly indicates a

different meaning:

* * *

“Capital stock value.” The amount computed pursuant to the following formula: the product of one-half times the sum of the average net income capitalized at the rate of nine and one-half per cent plus seventy-five per cent of net worth, from which product shall be subtracted [**fifty thousand dollars (\$50,000)**] *one hundred thousand dollars (\$100,000)*, the algebraic equivalent of which is

$$(.5 \times (\text{average net income} / .095 + (.75) \\ (\text{net worth}))) - [\mathbf{\$50,000}] \mathbf{\$100,000}$$

* * *

Section 4. Section 602(a), (b) and (e) of the act, amended December 23, 1983 (P.L.360, No.89) and December 23, 1983 (P.L.370, No.90), are amended to read:

Section 602. Imposition of Tax.—(a) That every domestic entity from which a report is required under section 601 hereof, shall be subject to, and pay to the department annually, a tax which is the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed at the rate of ten mills[,] upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1971 and the fiscal year beginning in 1971 *through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1987 and fiscal years beginning in 1987 and at the rate of nine and one-half mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992* and each year thereafter, except that any domestic entity or company subject to the tax prescribed herein may elect to compute and pay its tax under and in accordance with the provisions of subsection (b) of this section 602: Provided, That, except for the imposition of the seventy-five dollar (\$75) minimum tax, the provisions of this section shall not apply to the taxation of the capital stock of entities organized for manufacturing, processing, research or development purposes, which is invested in and actually and exclusively employed in carrying on manufacturing, processing, research or development within the State, except such entities as enjoy and exercise the right of eminent domain, but every entity organized for the purpose of manufacturing, processing, research or development except such entities as enjoy and exercise the right of eminent domain shall pay the State tax of the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed at the rate of ten mills *upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1971 and the fiscal year beginning in 1971 through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1987 and fiscal years beginning in 1987 and at the rate of nine and one-half mills upon each dollar of the capital stock value as defined in section 601(a)*

for the calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter, upon such proportion of its capital stock, if any, as may be invested in any property or business not strictly incident or appurtenant to the manufacturing, processing, research or development business, in addition to the local taxes assessed upon its property in the district where located, it being the object of this provision to relieve from State taxation, except for imposition of the seventy-five dollar (\$75) minimum tax under this section, only so much of the capital stock as is invested purely in the manufacturing, processing, research or development plant and business.

(b) (1) Every foreign entity from which a report is required under section 601 hereof, shall be subject to and pay to the department annually, a franchise tax which is the greater of (i) seventy-five dollars (\$75) or (ii) the amount computed at the rate of ten mills for the calendar year 1971 and the fiscal [year] years beginning in 1971 *through calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills for the calendar year 1987 and for fiscal years beginning in 1987 and at the rate of nine and one-half mills for calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills for calendar year 1992 and fiscal years beginning in 1992* and each year thereafter, upon a taxable value to be determined in the following manner. The capital stock value shall be ascertained in the manner prescribed in section 601(a) of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: Provided, That the manufacturing, processing, research and development exemptions contained under section 602(a) shall also apply to foreign corporations and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth. Any foreign corporation, joint-stock association, limited partnership or company subject to the tax prescribed herein may elect to compute and pay its tax under section 602(a): Provided, That any foreign corporation, joint-stock association, limited partnership or company electing to compute and pay its tax under section 602(a) shall be treated as if it were a domestic corporation for the purpose of determining which of its assets are exempt from taxation and for the purpose of determining the proportion of the value of its capital stock which is subject to taxation.

(2) The provisions of this article shall apply to the taxation of entities organized for manufacturing, processing, research or development purposes, but shall not apply to such entities as enjoy and exercise the right of eminent domain.

* * *

(e) Any holding company subject to the capital stock tax or the franchise tax imposed by this section may elect to compute the capital stock or fran-

chise tax by applying the rate of tax of ten mills *for the calendar year 1971 and the fiscal year beginning in 1971 through the calendar year 1986 and fiscal years beginning in 1986, at the rate of nine mills for the calendar year 1987 and fiscal years beginning in 1987, at the rate of nine and one-half mills for calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills for the calendar year 1992 and fiscal years beginning in 1992 and each year thereafter*, upon each dollar to ten per cent of the capital stock value, but in no case shall the tax so computed be less than seventy-five dollars (\$75). If exercised, this election shall be in lieu of any other apportionment or allocation to which such company would otherwise be entitled.

* * *

Section 5. The act is amended by adding a section to read:

Section 602.3. Deposit of Proceeds; Appropriation.—(a) *The proceeds resulting from the increase in the tax rate from nine mills to nine and one-half mills, effective for calendar year 1988 and fiscal years beginning in 1988 through calendar year 1991 and fiscal years beginning in 1991, shall be transferred to the Hazardous Sites Cleanup Fund which is hereby created.*

(b) *The funds deposited in the Hazardous Sites Cleanup Fund are hereby appropriated out of this account upon authorization by the Governor.*

Section 6. Section 1101(a) and (b) of the act, amended December 11, 1979 (P.L.499, No.107), are amended and the section is amended by adding a subsection to read:

Section 1101. Imposition of Tax.—(a) General Rule.—Every railroad company, pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any railroad, pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except taxicabs, motor buses and motor omnibuses, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company, express company, gas company, palace car company and sleeping car company, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone, telegraph, express, gas, palace car or sleeping car business in this Commonwealth, shall pay to the State Treasurer, through the Department of

Revenue, a tax of **[forty-five] forty-four** mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from passengers, baggage, and freight transported wholly within this State, from telegraph or telephone messages transmitted wholly within this State, from express, palace car or sleeping car business done wholly within this State, or from the sales of gas, except gross receipts derived from sales to any municipality owned or operated public utility and except gross receipts derived from the sales for resale, to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale and from the transportation of oil done wholly within this State. The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas.

(b) Electric Light, Waterpower and Hydro-electric Utilities.—Every electric light company, waterpower company and hydro-electric company now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in electric light and power business, waterpower business and hydro-electric business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of **[forty-five] forty-four** mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from:

(1) the sales of electric energy within this State, except gross receipts derived from the sales for resale of electric energy to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this subsection upon gross receipts derived from such resale; and

(2) the sales of electric energy produced in Pennsylvania and made outside of Pennsylvania in a state that has taken action since December 21, 1977 which results in higher costs for electric energy produced in that state and sold in Pennsylvania unless the action that was taken after December 21, 1977 is rescinded according to the following apportionment formula: except for gross receipts derived from sales under clause (1), the gross receipts from all sales of electricity of the producer shall be apportioned to the Commonwealth of Pennsylvania by the ratio of the producer's operating and maintenance expenses in Pennsylvania and depreciation attributable to property in Pennsylvania to the producer's total operating and maintenance expenses and depreciation.

* * *

(h) *Benefits to Consumer.*—*For purposes of this article, the reduction in the taxes imposed under subsections (a) and (b) shall derive to the benefit of the consumer purchasing services from said utilities. Said benefit shall be provided in the form of a reduction in the State tax surcharge. Failure to pass through the reduction to the consumer shall subject the public utility to a*

civil penalty of at least one thousand dollars (\$1,000), but not more than five thousand dollars (\$5,000), and such additional relief as the court may deem appropriate.

Section 7. Section 3003(b.2) and (c) of the act, amended or added July 1, 1985 (P.L.78, No.29) and July 2, 1986 (P.L.318, No.77), are amended and the section is amended by adding subsections to read:

Section 3003. Prepayment of Tax.—***

(b.2) Notwithstanding the provisions of subsections (a), (b) and (b.1), the tentative tax due, with respect to the capital stock and franchise tax for taxable years commencing during calendar year 1987 [and for each taxable year thereafter,] shall be computed by applying the [current tax rate] following tax rates to eighty per cent of such tax base from the year preceding the immediate prior year[.]:

(1) Any payment of tentative tax due prior to the effective date of this paragraph shall be payable at the tax rate applicable to calendar year 1986.

(2) Any payment of tentative tax due subsequent to the effective date of this paragraph shall be payable at the tax rate applicable to calendar year 1987.

(b.3) Notwithstanding the provisions of subsections (a), (b), (b.1) and (b.2), the tentative tax due with respect to the capital stock and franchise tax for taxable years commencing during calendar year 1988, and for each taxable year thereafter, shall be computed by applying the current tax rate to ninety per cent of such tax base from the year preceding the immediate prior year.

(c) Payment of taxes imposed by Articles IV, VI, IX, XI and XV of this act may at the taxpayer's election be an amount estimated by the taxpayer which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current calendar or fiscal year.

(d.1) A corporation with respect to the capital stock and franchise tax imposed by Article VI of this act may, at its election, report and pay in installments on account of the tax due for the current taxable year an amount computed either by applying the current tax rate to ninety per cent of the tax base as determined in subsection (b.3) of this section or as computed on the basis estimated by the taxpayer to be due for the current year which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current year as provided in subsection (c) of this section. The installments shall be paid in accordance with the following schedules:

<i>Year In Which Tax Year Begins</i>	<i>First Second Third Fourth Due on the 15th day of the following months after close of the previous tax year:</i>			
	<i>4th Month</i>	<i>6th Month</i>	<i>9th Month</i>	<i>12th Month</i>
<i>1988</i>	<i>44%</i>	<i>44%</i>	<i>6%</i>	<i>6%</i>
<i>1989</i>	<i>34%</i>	<i>34%</i>	<i>16%</i>	<i>16%</i>
<i>1990</i>	<i>29%</i>	<i>29%</i>	<i>21%</i>	<i>21%</i>
<i>1991 and thereafter</i>	<i>25%</i>	<i>25%</i>	<i>25%</i>	<i>25%</i>

Any taxpayer which has elected to compute its tentative tax liability on the aforesaid estimated basis and which has elected to report and pay the estimated tax in installments may, when reporting and paying its third or fourth installment, base the installment on an amended tentative tax report reflecting the taxpayer's new estimate of its tax liability for the tax year: Provided, That the new estimate reflects a lower tax liability than was previously reported in its original or, if applicable, amended tentative tax report. If an amended tentative tax report is filed, each remaining installment payment due, if any, shall be such as to bring the total installment payments made on account of the tax due for the current taxable year up to an amount determined by multiplying the tentative tax due for the year as reported in the amended report by the sum of the percentages set forth in the above schedule for the applicable elapsed installments.

The remaining portion of the tax due, if any, shall be paid upon the date the taxpayer's annual report is required to be filed under the applicable tax statute, determined without reference to any extension of time for filing such report.

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Section 8. Funds deposited in the Hazardous Sites Cleanup Fund established in section 5 (section 602.3) shall not be expended until enabling legislation is adopted by the General Assembly regarding the requirements for the use of the funds in the cleanup of hazardous waste sites.

Section 9. This act shall apply as follows:

(1) Sections 1 (section 204(46)) and 8 shall apply from the time they take effect.

(2) Section 2 (section 304(d)(1)) shall apply retroactively to the tax year commencing January 1, 1987, and each tax year thereafter.

(3) Section 4 (section 602(a), (b) and (e)) shall apply retroactively to the tax year commencing January 1, 1987, and each tax year thereafter or to the fiscal year commencing on or after January 1, 1987, and each fiscal year thereafter.

(4) Section 7 (section 3003(b.2)) shall apply retroactively to the tax year commencing January 1, 1987, or to the fiscal year commencing on or after January 1, 1987.

(5) The remainder of this act shall apply to the tax year commencing January 1, 1988, and each tax year thereafter.

Section 10. This act shall take effect as follows:

- (1) Section 1 (section 204(46)) shall take effect September 30, 1987, or immediately, whichever is later.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 13th day of July, A. D. 1987.

ROBERT P. CASEY