No. 1997-7

AN ACT

HB 134

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," making amendments relating to the sales and use tax, the personal income tax, the corporate net income tax, the capital stock franchise tax, the realty transfer tax, the neighborhood assistance tax credit, the malt beverage tax and the inheritance tax; adding provisions relating to a research and development tax credit; and making repeals.

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

Section 1. Section 201(c), (d), (k), (o), (dd), (ee), (ff), (gg), (hh), (ii) and (ll) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or added August 4, 1991 (P.L.97, No.22), December 13, 1991 (P.L.373, No.40), June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), are amended to read:

Section 201. Definitions.—The following words, terms and phrases when used in this Article II shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(c) "Manufacture." The performance of manufacturing, fabricating, compounding, processing or other operations, engaged in as a business, which place any tangible personal property in a form, composition or character different from that in which it is acquired whether for sale or use by the manufacturer, and shall include, but not be limited to—

(1) Every operation commencing with the first production stage and ending with the completion of tangible personal property having the physical qualities (including packaging, if any, passing to the ultimate consumer) which it has when transferred by the manufacturer to another;

(2) The publishing of books, newspapers, magazines and other periodicals and printing;

(3) Refining, blasting, exploring, mining and quarrying for, or otherwise extracting from the earth or from waste or stock piles or from pits or banks any natural resources, minerals and mineral aggregates including blast furnace slag;

(4) Building, rebuilding, repairing and making additions to, or replacements in or upon vessels designed for commercial use of registered tonnage of fifty tons or more when produced upon special order of the

purchaser, or when rebuilt, repaired or enlarged, or when replacements are made upon order of, or for the account of the owner;

(5) Research having as its objective the production of a new or an improved (i) product or utility service, or (ii) method of producing a product or utility service, but in either case not including market research or research having as its objective the improvement of administrative efficiency.

(6) Remanufacture for wholesale distribution by a remanufacturer of motor vehicle parts from used parts acquired in bulk by the remanufacturer using an assembly line process which involves the complete disassembly of such parts and integration of the components of such parts with other used or new components of parts, including the salvaging, recycling or reclaiming of used parts by the remanufacturer.

(7) Remanufacture or retrofit by a manufacturer or remanufacturer of aircraft, armored vehicles, other defense-related vehicles having a finished value of at least fifty thousand dollars ($50,000). Remanufacture or retrofit involves the disassembly of such aircraft, vehicles, parts or components, including electric or electronic components, the integration of those parts and components with other used or new parts or components, including the salvaging, recycling or reclaiming of the used parts or components and the assembly of the new or used aircraft, vehicles, parts or components. For purposes of this clause, the following terms or phrases have the following meanings:

(i) "aircraft" means fixed-wing aircraft, helicopters, powered aircraft, tilt-rotor or tilt-wing aircraft, unmanned aircraft and gliders;

(ii) "armored vehicles" means tanks, armed personnel carriers and all other armed track or semitrack vehicles; or

(iii) "other defense-related vehicles" means trucks, truck-tractors, trailers, jeeps and other utility vehicles, including any unmanned vehicles.

The term "manufacture[,]" shall not include constructing, altering, servicing, repairing or improving real estate or repairing, servicing or installing tangible personal property, nor the cooking, freezing or baking of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products.

* * *

(d) "Processing." The performance of the following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(1.1) The processing of vegetables by cleaning, cutting, coring or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

(4) The rolling, drawing or extruding of ferrous and non-ferrous metals.

(5) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings (not including fabrication work done at the construction site).

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of non-alcoholic beverages for wholesale distribution.

(8) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale.

(9) The milling for sale of flour or meal from grains.

(9.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(10) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(11) The processing of used lubricating oils.

(12) The broadcasting of radio and television programs of licensed commercial or educational stations.

(13) The cooking or baking of bread, pastries, cakes, cookies, muffins and donuts when the person engaged in such activity sells such items at retail at locations that do not constitute an establishment from which ready-to-eat food and beverages are sold. For purposes of this clause, a bakery, a pastry shop and a donut shop shall not be considered an establishment from which ready-to-eat food and beverages are sold.

* * *

(k) "Sale at retail."

(1) Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.

(2) The rendition of the service of printing or imprinting of tangible personal property for a consideration for persons who furnish, either directly or indirectly the materials used in the printing or imprinting.

(3) The rendition for a consideration of the service of—

(i) Washing, cleaning, waxing, polishing or lubricating of motor vehicles of another, whether or not any tangible personal property is transferred in conjunction therewith; and

(ii) Inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated self-service laundry equipment for wearing apparel or household goods and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service.

(8) Any retention of possession, custody or a license to use or consume tangible personal property or any further obtaining of services described in subclauses (2), (3) and (4) of this clause pursuant to a rental or service contract or other arrangement (other than as security).

The term "sale at retail" shall not include (i) any such transfer of tangible personal property or rendition of services for the purpose of resale, or (ii) such rendition of services or the transfer of tangible personal property including, but not limited to, machinery and equipment and parts therefor and supplies to be used or consumed by the purchaser directly in the operations of—

(A) The manufacture of tangible personal property;

(B) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch raised fur-bearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game);

(C) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering such service;

(D) Processing as defined in clause (d) of this section.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to any vehicle required to be registered under The Vehicle Code, except those vehicles used directly by a public utility engaged in business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction,

remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in paragraphs (A), (B), (C) and (D) herein.

The exclusion provided in paragraph (C) shall not apply to (i) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service, (ii) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain a building, road or similar structure, or (iii) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to the services enumerated in clauses (k)(11) through (18) and (w) through (kk), except that the exclusion provided in this subclause for farming, dairying and agriculture shall apply to the service enumerated in clause (z).

(9) Where tangible personal property or services are utilized for purposes constituting a "sale at retail" and for purposes excluded from the definition of "sale at retail," it shall be presumed that such tangible personal property or services are utilized for purposes constituting a "sale at retail" and subject to tax unless the user thereof proves to the department that the predominant purposes for which such tangible personal property or services are utilized do not constitute a "sale at retail."

(10) The term "sale at retail" with respect to "liquor" and "malt or brewed beverages" shall include the sale of "liquor" by any "Pennsylvania liquor store" to any person for any purpose, and the sale of "malt or brewed beverages" by a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" to any person for any purpose, except sales by a "manufacturer of malt or brewed beverages" to a "distributor" or "importing distributor" or sales by an "importing distributor" to a "distributor" within the meaning of the "Liquor Code." The term "sale at retail" shall not include any sale of "malt or brewed beverages" by a "retail dispenser" or any sale of "liquor" or "malt or brewed beverages" by a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include any sale of "liquor" or "malt or brewed beverages" other than pursuant to the provisions of the "Liquor Code."

(11) The rendition for a consideration of lobbying services.

(12) The rendition for a consideration of adjustment services, collection services or credit reporting services.

(13) The rendition for a consideration of secretarial or editing services.

(14) The rendition for a consideration of disinfecting or pest control services, building maintenance or cleaning services.

(15) The rendition for a consideration of employment agency services or help supply services.

[(16) The rendition for a consideration of computer programming services; computer-integrated systems design services; computer processing, data preparation or processing services; information retrieval services; computer facilities management services; or other computer-related services. At a minimum, such services shall not include services that are part of electronic fund transfers, electronic financial transactions or services, banking or trust services, or management or administrative services, including transfer agency, shareholder, custodial and portfolio accounting services, provided directly to any entity that duly qualifies to be taxed as a regulated investment company or a real estate investment trust under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or to an entity that provides such services to an entity so qualifying.]

(17) The rendition for a consideration of lawn care service.

(18) The rendition for a consideration of self-storage service.

* * *

(o) "Use."

(1) The exercise of any right or power incidental to the ownership, custody or possession of tangible personal property and shall include, but not be limited to transportation, storage or consumption.

(2) The obtaining by a purchaser of the service of printing or imprinting of tangible personal property when such purchaser furnishes, either directly or indirectly, the articles used in the printing or imprinting.

(3) The obtaining by a purchaser of the services of (i) washing, cleaning, waxing, polishing or lubricating of motor vehicles whether or not any tangible personal property is transferred to the purchaser in conjunction with such services, and (ii) inspecting motor vehicles pursuant to the mandatory requirements of "The Vehicle Code."

(4) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other tangible personal property other than wearing apparel or shoes, whether or not the services are performed directly or by any means other than by means of coin-operated self-service laundry equipment for wearing apparel or household goods, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204,

or upon diaper service: And provided further, That the term "use" shall not include—

(A) Any tangible personal property acquired and kept, retained or over which power is exercised within this Commonwealth on which the taxing of the storage, use or other consumption thereof is expressly prohibited by the Constitution of the United States or which is excluded from tax under other provisions of this article.

(B) The use or consumption of tangible personal property, including but not limited to machinery and equipment and parts therefor, and supplies or the obtaining of the services described in subclauses (2), (3) and (4) of this clause directly in the operations of—

(i) The manufacture of tangible personal property;

(ii) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise. The term "farming" shall include the propagation and raising of ranch-raised furbearing animals and the propagation of game birds for commercial purposes by holders of propagation permits issued under 34 Pa.C.S. (relating to game);

(iii) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities which are directly used in producing, delivering or rendering such service;

(iv) Processing as defined in subclause (d) of this section.

The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to any vehicle required to be registered under The Vehicle Code except those vehicles directly used by a public utility engaged in the business as a common carrier; to maintenance facilities; or to materials, supplies or equipment to be used or consumed in the construction, reconstruction, remodeling, repair or maintenance of real estate other than directly used machinery, equipment, parts or foundations therefor that may be affixed to such real estate. The exclusions provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to tangible personal property or services to be used or consumed in managerial sales or other nonoperational activities, nor to the purchase or use of tangible personal property or services by any person other than the person directly using the same in the operations described in subparagraphs (i), (ii), (iii) and (iv).

The exclusion provided in subparagraph (iii) shall not apply to (A) construction materials, supplies or equipment used to construct, reconstruct, remodel, repair or maintain facilities not used directly by the purchaser in the production, delivering or rendition of public utility service or (B) tools and equipment used but not installed in the maintenance of facilities used directly in the production, delivering or rendition of a public utility service.

The exclusion provided in subparagraphs (i), (ii), (iii) and (iv) shall not apply to the services enumerated in clauses (o)(9) through (16) and (w) through (kk), except that the exclusion provided in subparagraph (ii) for

farming, dairying and agriculture shall apply to the service enumerated in clause (z).

(5) Where tangible personal property or services are utilized for purposes constituting a "use," as herein defined, and for purposes excluded from the definition of "use," it shall be presumed that such property or services are utilized for purposes constituting a "sale at retail" and subject to tax unless the user thereof proves to the department that the predominant purposes for which such property or services are utilized do not constitute a "sale at retail."

(6) The term "use" with respect to "liquor" and "malt or brewed beverages" shall include the purchase of "liquor" from any "Pennsylvania liquor store" by any person for any purpose and the purchase of "malt or brewed beverages" from a "manufacturer of malt or brewed beverages," "distributor" or "importing distributor" by any person for any purpose, except purchases from a "manufacturer of malt or brewed beverages" by a "distributor" or "importing distributor," or purchases from an "importing distributor" by a "distributor" within the meaning of the "Liquor Code." The term "use" shall not include any purchase of "malt or brewed beverages" from a "retail dispenser" or any purchase of "liquor" or "malt or brewed beverages" from a person holding a "retail liquor license" within the meaning of and pursuant to the provisions of the "Liquor Code," but shall include the exercise of any right or power incidental to the ownership, custody or possession of "liquor" or "malt or brewed beverages" obtained by the person exercising such right or power in any manner other than pursuant to the provisions of the "Liquor Code."

(7) The use of tangible personal property purchased at retail upon which the services described in subclauses (2), (3) and (4) of this clause have been performed shall be deemed to be a use of said services by the person using said property.

(8) The term "use" shall not include the providing of a motor vehicle to a nonprofit private or public school to be used by such a school for the sole purpose of driver education.

(9) The obtaining by the purchaser of lobbying services.

(10) The obtaining by the purchaser of adjustment services, collection services or credit reporting services.

(11) The obtaining by the purchaser of secretarial or editing services.

(12) The obtaining by the purchaser of disinfecting or pest control services, building maintenance or cleaning services.

(13) The obtaining by the purchaser of employment agency services or help supply services.

[(14) The obtaining by the purchaser of computer programming services; computer-integrated systems design services; computer processing, data preparation or processing services; information retrieval services; computer facilities management services; or other computer-related services. At a minimum, such services shall not include services

that are part of electronic fund transfers, electronic financial transactions or services, banking or trust services, or management or administrative services, including transfer agency, shareholder, custodial and portfolio accounting services, provided directly to any entity that duly qualifies to be taxed as a regulated investment company or a real estate investment trust under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or to an entity that provides such services to an entity so qualifying.]

(15) The obtaining by the purchaser of lawn care service.

(16) The obtaining by the purchaser of self-storage service.

* * *

[(dd) "Computer programming services." Providing computer programming or computer software design and analysis. Such services include, but are not limited to, services of the type provided by or through computer programming services, customer computer programming services, computer code authors and free-lance computer software writers, software modification, custom software programming, custom computer programs or system software development, custom computer software systems analysis and design, custom applications software programming, computer code authors or free-lance computer software writers.

(ee) "Computer integrated systems design." Developing or modifying computer software and packaging or bundling the software with computer hardware (computers and computer peripheral equipment) to create and market an integrated system for specific application. A business is providing such services under this clause only if it provides each of the following services:

(1) the development or modification of the computer software;

(2) the marketing of computer hardware; and

(3) involvement in all phases of systems development from design through installation.

Such services under this clause include, but are not limited to, computer systems integration, computer network systems integration, local area network (LAN) systems integration, office automation, computer systems value-added resellers, computer systems turnkey vendors, computer-aided design (CAD) systems services, computer-aided engineering (CAE) systems services or computer-aided manufacturing (CAM) systems services.

(ff) "Computer processing, data preparation or processing services." Such services include, but are not limited to, providing processing and preparation of reports from data supplied by the customer or a specialized service, such as data entry; making data processing equipment available on an hourly, time-sharing or other basis; computer timesharing and leasing or rental of computer time; computer tabulating

and calculating services; data entry, processing or verification services; keypunch services; or optical scanning data services.

(gg) "Information retrieval services." Providing computer on-line information retrieval services. Such services include, but are not limited to, data base information retrieval services, on-line information retrieval services, on-line data base information retrieval services or remote data base information retrieval services.

(hh) "Computer facilities management services." Providing onsite management or controlling the operation of data processing facilities or similar services.

(ii) "Other computer-related services." Supplying computer-related services not described elsewhere in clauses (dd) through (hh). Such services include, but are not limited to, computer consulting services; data base development and data processing consulting services; disk, diskette or tape conversion services; disk, diskette or tape recertification services; computer hardware and software requirement analysis services; software documentation services; software installation services; software training services if provided in conjunction with the purchase of software; or reformatting or editing services.]

* * *

(ll) "Premium cable or premium video programming service." That portion of cable television services, video programming services, community antenna television services or any other distribution of television, video, audio or radio services which meets all of the following criteria:

(1) is transmitted with or without the use of wires to purchasers; **[and]**

(2) which consists substantially of programming uninterrupted by paid commercial advertising which includes, but is not limited to, programming primarily composed of uninterrupted full-length motion pictures or sporting events, pay-per-view, paid programming or like audio or radio broadcasting[.]; ***and***

(3) does not constitute a component of a basic service tier provided by a cable television system or a cable programming service tier provided by a cable television system. A basic service tier shall include all signals of domestic television broadcast stations, any public, educational, governmental or religious programming and any additional video programming signals or service added to the basic service tier by the cable operator. The basic service tier shall also include a single additional lower-priced package of broadcast channels and access information channels which is a subset of the basic service tier as set forth above. A cable programming service tier includes any video programming other than: (i) the basic service tier; (ii) video programming offered on a pay-per-channel or pay-per-view basis; or (iii) a combination of multiple channels of pay-per-channel or pay-per-view programming offered as a package.

If a purchaser receives or agrees to receive premium cable or premium video programming service, then the following charges are included in the purchase

price: charges for installation or repair of any premium cable or premium video programming service, upgrade to include additional premium cable or premium video programming service, downgrade to exclude all or some premium cable or premium video programming service, additional premium cable outlets in excess of ten or any other charge or fee related to premium cable or premium video programming services. The term shall not apply to transmissions by public television, public radio services or official Federal, State or local government cable services. Nor shall the term apply to local origination programming which provides a variety of public service programs unique to the community, programming which provides coverage of public affairs issues which are presented without commentary or analysis, including United States Congressional proceedings, or programming which is substantially related to religious subjects. Nor shall the term "premium cable or premium video programming service" apply to subscriber charges for access to a video dial tone system or charges by a common carrier to a video programmer for the transport of video programming.

Section 2. Section 204(29) and (52) of the act, amended or added August 4, 1991 (P.L.97, No.22), December 13, 1991 (P.L.373, No.40) and June 30, 1995 (P.L.139, No.21), are amended and the section is amended by adding clauses to read:

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

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(29) The sale at retail or use of food and beverages for human consumption, **[including candy and gum,]** except that this exclusion shall not apply with respect to—

(i) Soft drinks;

(ii) Malt and brewed beverages and spirituous and vinous liquors;

(iii) Food or beverages, whether sold for consumption on or off the premises or on a "take-out" or "to go" basis or delivered to the purchaser or consumer, when purchased (A) from persons engaged in the business of catering; or (B) from persons engaged in the business of operating establishments from which ready-to-eat food and beverages are sold, including, but not limited to, restaurants, cafes, lunch counters, private and social clubs, taverns, dining cars, hotels, night clubs, fast food operations, pizzerias, fairs, carnivals, lunch carts, ice cream stands, snack bars, cafeterias, employe cafeterias, theaters, stadiums, arenas, amusement parks, carryout shops, coffee shops and other establishments whether mobile or immobile. For purposes of this clause, a bakery, a pastry shop, a donut shop, a delicatessen, grocery store, supermarket, farmer's market or a convenience store shall not be considered an establishment from which food or beverages ready to eat are sold except for the sale of meals, sandwiches, food from salad bars, hand-dipped or hand-served iced based products including ice cream and yogurt, hot soup, hot pizza and other hot food items, brewed coffee and hot beverages. For purposes of this subclause, beverages shall not

include malt and brewed beverages and spirituous and vinous liquors but shall include soft drinks. The sale at retail of food and beverages at or from a school or church in the ordinary course of the activities of such organization is not subject to tax.

* * *

[(52) The sale at retail or use of computer services to keypunch, count, sort, tabulate or otherwise prepare for payment promotional price reduction offers such as discount coupons, "cents-off" coupons and rebate offers.]

(53) The sale at retail or use of candy or gum regardless of the location from which the candy or gum is sold.

(54) The sale at retail to or use by a producer of commercial motion pictures of any tangible personal property directly used in the production of a feature-length commercial motion picture distributed to a national audience: Provided, however, That the production of any motion picture for which the property will be used does not violate any Federal or State law; and Provided further That the purchaser shall furnish to the vendor a certificate substantially in the form as the Department of Community and Economic Development may, by regulation, prescribe, stating that the sale is exempt from tax pursuant to this clause.

Section 3. Section 253 of the act, amended April 8, 1976 (P.L.92, No.38) and July 1, 1985 (P.L.78, No.29), is amended to read:

Section 253. Refund Petition.—(a) Except as provided for in section 256 and in subsection (b) and (d) of this section, the refund or credit of tax, interest or penalty provided for by section 252 shall be made only where the person who has actually paid the tax files a petition for refund with the department **[within three years of the actual payment of the tax to the Commonwealth]** ***under section 3003.1.*** Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that the Commonwealth is not rightfully entitled to such tax, interest or penalty, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

(b) A refund or credit of tax, interest or penalty, paid as a result of an assessment made by the department under section 231, shall be made only where the person who has actually paid the tax files with the department a petition for a refund with the department **[within six months after the date the notice of assessment was mailed]** ***under section 3003.1(d).*** The filing of a petition for refund, under the provisions of this subsection, shall not affect the abatement of interest, additions or penalties to which the person may be entitled by reason of his payment of the assessment.

(c) It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

(d) Notwithstanding any other provision of this section where any tax, interest or penalty has been paid under a provision of this article subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional, or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed either before or subsequent to final judgment, but such petition must be filed **[within three years of the date of the payment of which a refund is requested]** ***under section 3003.1***. The department shall have jurisdiction to hear and determine any such petition filed prior to such final judgment only if, at the time of filing of the petition, proceedings are pending in a court of competent jurisdiction wherein the claim of unconstitutionality or of erroneous interpretation, made in the petition for refund may be established, and in such case, the department shall not take final action upon the petition for refund until the judgment determining the question involved in such petition has become final.

Section 4. Section 266(d) of the act is amended to read:

Section 266. Additions to Tax.—* * *

[(d) Uncollectible Checks. Whenever any check issued in payment of any tax or for any other purpose shall be returned to the department as uncollectible, the secretary shall charge a fee of ten per cent of the face amount thereof plus all protest fees, to the person presenting such check to him to cover the cost of its collection in addition to the interest and penalties otherwise provided for by this article: Provided, however, That the additions imposed hereby shall not exceed two hundred dollars ($200) nor be less than ten dollars ($10).]

Section 5. Section 301 introductory paragraph, (c.2), (d), (d.1), (e.1) and (s.2) of the act, amended or added August 31, 1971 (P.L.362, No.93), December 23, 1983 (P.L.370, No.90), December 13, 1991 (P.L.373, No.40), June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), are amended and the section is amended by adding clauses to read:

Section 301. Definitions.—The following words, terms and phrases when used in this article shall have the meaning ascribed to them in this section except where the context clearly indicates a different meaning. **[Any]** ***Unless specifically provided otherwise, any*** reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of **[1954]** ***1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.)***, as amended to **[the date on which this article is effective]** ***January 1, 1997***:

* * *

(c.2) "Claimant" means a person who is subject to the tax imposed under this article, is not a dependent of another **[person]** ***taxpayer for purposes of***

section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151), but is entitled to claim against such tax the poverty tax provisions as provided by this act.

(d) "Compensation" means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

The term "compensation" shall not mean or include: (i) periodic payments for sickness and disability other than regular wages received during a period of sickness or disability; or (ii) disability, retirement or other payments arising under workmen's compensation acts, occupational disease acts and similar legislation by any government; or (iii) payments commonly recognized as old age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment; or (iv) payments commonly known as public assistance, or unemployment compensation payments by any governmental agency; or (v) payments to reimburse actual expenses; or (vi) payments made by employers or labor unions **[for]**, ***including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employe benefit*** programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits**[,]** ***or*** strike benefits**[, social security and retirement]**: ***Provided, That the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits***; or (vii) any compensation received by United States servicemen serving in a combat zone; or (viii) payments received by a foster parent for in-home care of foster children from an agency of the Commonwealth or a political subdivision thereof or an organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code of 1954 which is licensed by the Commonwealth or a political subdivision thereof as a placement agency**[.]**; ***or (ix) payments made by employers or labor unions for employe benefit programs covering social security or retirement.***

(d.1) "Corporation," **[as used in the definition of a "small corporation" in this section and]** for purposes of applying the provisions of section 303(a) with respect to a "reorganization" as defined in that section, the term "corporation" shall include a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies **[and]**, ***a common law business trust or a limited liability company*** that for Federal income tax purposes is taxable as a corporation ***or an investment company***. **[The term does not include:**

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments

and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments of regulated investment companies.]

* * *

(e.1) "Dependent" means a **[spouse or child who derives more than one-half of his total support during the entire taxable year from a claimant entitled to claim the poverty exemption. Any person who is a dependent pursuant to the provisions of the Internal Revenue Code during a taxable year shall prima facie be deemed a dependent for purposes of this act.]** ***child who is the dependent of a claimant for purposes of section 151 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 151).***

* * *

(n.0) "Partnership" means a domestic or foreign general partnership, joint venture, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is taxable as a partnership.

* * *

(o.3) "Qualified Subchapter S subsidiary" means a domestic or foreign corporation which for Federal income tax purposes is treated as a qualified Subchapter S subsidiary, as defined in section 1361(b)(3)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1361), as amended to January 1, 1997.

* * *

(s.2) "Small corporation" means any corporation which has a valid election in effect under subchapter S of Chapter 1 of the **[Internal Revenue Code of 1954, as amended as of January 1, 1983]** ***Internal Revenue Code of 1986, as amended to January 1, 1997***, and which does not have passive investment income in excess of twenty-five per cent of its gross receipts. For purposes of this clause, "passive investment income" means gross receipts derived from royalties, rents, dividends, interest, annuities and sales or exchanges of stock or securities (gross receipts from such sales or exchanges being taken into account only to the extent of gains therefrom). ***For purposes of determining whether a corporation qualifies as a small corporation for purposes of this article, (i) a qualified Subchapter S subsidiary owned by a small corporation shall not be treated as a separate corporation, and all***

gross receipts and passive investment income of such qualified Subchapter S subsidiary shall be treated as earned by the parent corporation; and (ii) all intercorporate payments or distributions between the parent corporation and any qualified Subchapter S subsidiary owned by such corporation shall be eliminated.

* * *

Section 6. Section 303(a)(3) of the act, amended July 13, 1987 (P.L.325, No.59) and December 3, 1993 (P.L.473, No.68), is amended to read:

Section 303. Classes of Income.—(a) The classes of income referred to above are as follows:

* * *

(3) Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real property, tangible personal property, intangible personal property or obligations issued on or after the effective date of this amendatory act by the Commonwealth; any public authority, commission, board or other agency created by the Commonwealth; any political subdivision of the Commonwealth or any public authority created by any such political subdivision; or by the Federal Government as determined in accordance with accepted accounting principles and practices. For the purpose of this **[act, for]** ***article:***

(i) For the determination of the basis of any property, real and personal, if acquired prior to June 1, 1971, the date of acquisition shall be adjusted to June 1, 1971, as if the property had been acquired on that date. If the property was acquired after June 1, 1971, the actual date of acquisition shall be used in determination of the basis.

(ii) At the election of the taxpayer, the term "net gains or income" shall not include net gain in an amount not to exceed one hundred thousand dollars ($100,000), or a pro rata part of one hundred thousand dollars ($100,000) if the property is owned by more than one taxpayer, from the sale or exchange of the taxpayer's principal residence if the taxpayer has attained fifty-five years of age before the date of the sale or exchange. If the property is held by a husband and wife and they make a joint return for the taxable year of the sale or exchange and one spouse satisfies the age, ownership and use requirements of this **[clause]** ***subparagraph (ii)*** with respect to the property, then both husband and wife shall be treated as satisfying the age, ownership and use requirements of this **[clause]** ***subparagraph (ii).***

(A) For purposes of this **[clause, in]** ***subparagraph (ii):***

(I) In the case of an unremarried individual whose spouse is deceased on the date of sale or exchange of the property, if the deceased spouse, during the five-year period ending on the date of sale or exchange satisfied the holding and use requirements with respect to such property, then such individual shall be treated as satisfying holding and use requirements with respect to such property. **[For the purposes of this clause, the]**

(II) ***The*** term "sale or exchange" shall include involuntary conversions such as the destruction, theft, seizure, requisition or condemnation of the property. **[For the purposes of this clause, the]**

(III) ***The*** term "principal residence" shall mean the property that has been owned and used by the taxpayer as his principal residence for periods aggregating three years or more during the five-year period ending on the date of the sale or exchange. In the case of property only a portion of which, during the five-year period ending on the date of the sale or exchange, has been owned or used by the taxpayer as the taxpayer's principal residence for periods aggregating three years or more, this **[section]** ***subparagraph (ii)*** shall apply with respect to so much of the gain from the sale or exchange of such property as is determined under regulations prescribed by the department to be attributable to the portion of the property so owned and used by the taxpayer.

(IV) The term "used" shall include time the property was not used for rental purposes and was unoccupied by the taxpayer due to the taxpayer being in a hospital, nursing home or personal care facility, or for a period of less than ninety consecutive days.

(B) The provisions of this **[clause]** ***subparagraph (ii)*** shall not apply to any sale or exchange made prior to July 1, 1987.

(C) An election under this **[clause]** ***subparagraph (ii)*** may be made or revoked at any time before the expiration of the period for making a claim for a refund of the tax imposed by this article for the taxable year in which the sale or exchange occurred.

(D) The provisions of this **[clause]** ***subparagraph (ii)*** shall be used only once during the lifetime of the taxpayer.

(iii) The term "net gains or income" and "net losses" shall not include gains or income or loss derived from obligations which are statutorily free from State or local taxation under the act of August 31, 1971 (P.L.395, No.94), entitled "An act exempting from taxation for State and local purposes within the Commonwealth certain obligations, their transfer and the income therefrom (including any profits made on the sale thereof), issued by the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by any such political subdivision," or under the laws of the United States.

(iv) The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. ***The following shall apply:***

(A) For purposes of this **[clause]** ***subparagraph (iv)***, stock or securities issued for services shall not be considered as issued in return for property.

(B) For purposes of this **[clause]** ***subparagraph (iv)***, the term "reorganization" means**[**—

(i) a] ***any of the following:***

(I) ***A*** statutory merger or consolidation**[; the**

(ii)].

(II) ***The*** acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition)**[;**

(iii) the].

(III) ***The*** acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded**[;**

(iv) a].

(IV) ***A*** transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred**[;**

(v) a].

(V) ***A*** recapitalization**[;**

(vi) a].

(VI) ***A*** mere change in identity, form, or place of organization however effected**[; or**

(vii) the].

(C) ***The*** acquisition by one corporation, in exchange for stock of a corporation (referred to in this **[subclause]** ***clause (C)*** as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under **[subclause (i)]** ***clause (B)(I)*** if such transaction would have qualified under **[subclause (i)]** ***clause(B)(I)*** if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction**[;**

(viii) a].

(D) ***A*** transaction otherwise qualifying under **[subclause (i)]** ***clause (B)(I)*** shall not be disqualified by reason of the fact that stock of a corporation

(referred to in this **[subclause]** ***clause (D)*** as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

(E) For purposes of this **[clause, the]** ***subparagraph (iv):***

(I) The term "control" means the ownership of stock possessing at least eighty per cent of the total combined voting power of all classes of stock entitled to vote and at least eighty per cent of the total number of shares of all other classes of stock of the corporation.

[For purposes of this clause, the] ***(II) The*** term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under **[subclause (i)]** ***clause (B)(I)*** by reason of **[subclause (vii)]** ***clause (C)*** the term "a party to a reorganization" includes the controlling corporation referred to in **[such subclause (vii)]** ***clause (C).***

(F) Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's base for the stock or securities received shall be the same as the taxpayer's actual or attributed base for the stock, securities or property surrendered in exchange therefor.

(v) The term "sale, exchange or other disposition" shall not include a transfer by a common trust fund described in section 584 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 584) of all or substantially all of its assets to one or more companies described in section 851 of the Internal Revenue Code of 1986 (26 U.S.C. § 851) in exchange for stock or units of beneficial interest in the company or companies to which such assets are transferred and the distribution of such stock or units by the fund to its participants in exchange for their interest in the fund, if no gain or loss is recognized on the transfer or distribution for Federal income tax purposes. Upon every such exchange, the taxpayer's base for the stock or units or assets received shall be the same as the taxpayer's actual or attributed base for the assets, stock, units or interest surrendered in exchange therefor.

(vi) The term "sale, exchange or other disposition" shall not include a transfer of an interest in an enterprise treated as a partnership for purposes of this article in exchange for an interest in any other enterprise treated as a partnership for purposes of this article, a liquidation made in connection therewith or an exchange made pursuant to a statutory merger, consolidation or division of enterprises so treated unless taxable income or gain is recognized for Federal income tax purposes. Upon every such

exchange, the taxpayer's base for the interest received shall be the same as the taxpayer's actual or attributed base for the interest surrendered in exchange therefor.

* * *

Section 7. Section 304(d) of the act, amended December 13, 1991 (P.L.373, No.40) and June 16, 1994 (P.L.279, No.48), 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 six thousand three hundred dollars ($6,300) or less, ***or, in the case of a married claimant, if the joint poverty income of the claimant and the claimant's spouse during an entire taxable year is twelve thousand six hundred dollars ($12,600) 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 **[three thousand dollars ($3,000)]** ***four thousand dollars ($4,000)*** for the first additional dependent and an additional income allowance of **[three thousand dollars ($3,000)]** ***four thousand dollars ($4,000)*** for each additional dependent of the claimant. ***For purposes of this subsection, a claimant shall not be considered to be married if:***

(i) The claimant and the claimant's spouse file separate returns; and

(ii) The claimant and the claimant's spouse live apart at all times during the last six months of the taxable year or are separated pursuant to a written separation agreement.

(2) If the poverty income of the claimant during an entire taxable year does not exceed the poverty income limitations prescribed by clause (1) by more than the dollar category contained in subclauses (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix) of this clause, the claimant shall be entitled to a refund or forgiveness based on the per centage prescribed in such subclauses of any moneys which have been paid over to (or would except for the provisions herein be payable to) the Commonwealth under this article:

(i) Ninety per cent if not in excess of one hundred dollars ($100).

(ii) Eighty per cent if not in excess of two hundred dollars ($200).

(iii) Seventy per cent if not in excess of three hundred dollars ($300).

(iv) Sixty per cent if not in excess of four hundred dollars ($400).

(v) Fifty per cent if not in excess of five hundred dollars ($500).

(vi) Forty per cent if not in excess of six hundred dollars ($600).

(vii) Thirty per cent if not in excess of seven hundred dollars ($700).

(viii) Twenty per cent if not in excess of eight hundred dollars ($800).

(ix) Ten per cent if not in excess of nine hundred dollars ($900).

(3) If an individual has a taxable year of less than twelve months, the poverty income thereof shall be annualized in such manner as the department may prescribe.

Section 8. Sections 307, 307.6, 307.8 and 307.9 of the act, added December 23, 1983 (P.L.370, No.90), are amended to read:

Section 307. Election by Small Corporation.—Except as provided in section 307.6, any small corporation ***that is subject to the tax imposed under Article IV or owns a qualified S corporation subsidiary that is subject to the tax imposed under Article IV*** may elect **[not to be subject to the tax imposed under Article IV.]** ***to be taxed as a Pennsylvania S corporation.*** Such election shall be valid only if all the shareholders of the corporation on the day on which the election is made consent to the election. ***A qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall be treated as a Pennsylvania S corporation whether or not an election has been made with respect to such subsidiary.***

Section 307.6. Election after Revocation or Termination.—If a corporation has made an election under section 307 and if such election has been revoked ***pursuant to section 307.3*** or terminated ***for exceeding the passive investment income limitation in section 301(s.2)***, such corporation, and any successor corporation, shall not be eligible to make an election under section 307 for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such revocation or termination is effective.

Section 307.8. Income of a Pennsylvania S Corporation.—(a) A Pennsylvania S corporation **[as such]** shall not be subject to the tax imposed by this article, but the shareholders of the Pennsylvania S corporation shall be subject to the tax imposed under this article as provided in this article.

[(b) No deduction shall be allowed for taxes based on income or taxes paid by the Pennsylvania S corporation pursuant to subchapter S of Chapter 1 or section 58(d) of the Internal Revenue Code of 1954, as amended as of January 1, 1983.]

(b) If any tax is imposed on a Pennsylvania S corporation (or any qualified Subchapter S subsidiary owned by such Pennsylvania S corporation) pursuant to section 1374 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1374), as amended to January 1, 1997, or pursuant to Article IV or Article VI for any taxable year, then, for purposes of section 307.9, the amount of tax so imposed shall be treated as a loss sustained by such Pennsylvania S corporation during such years. In the case of taxes imposed pursuant to section 1374 of the Internal Revenue Code of 1986, as amended to January 1, 1997, or Article IV, the character of such loss shall be determined by allocating the loss proportionately among the recognized built-in gains giving rise to such tax.

(c) If a Pennsylvania S corporation makes a distribution of property, other than an obligation of such corporation, with respect to its stock and the fair market value of such property exceeds its adjusted basis in the hands of the corporation, then gain shall be recognized on the distribution as if the property had been sold to the distributee at its fair market value.

(d) Any election which may affect the computation of items derived from a Pennsylvania S corporation shall be made by the corporation.

(e) Any deduction, except a net loss deduction, which was disallowed when a corporation was subject to the tax imposed under Article IV shall be allowed in years in which the corporation is a Pennsylvania S corporation to the same extent and in the same manner that the deduction would have been allowed if the corporation had remained subject to the tax imposed under Article IV.

Section 307.9. Income of Pennsylvania S Corporations Taxed to Shareholders.—(a) Each shareholder of a Pennsylvania S corporation shall take into income such shareholder's pro rata share of the income or loss in each applicable class of income received by the corporation for its taxable year ending within or with the shareholder's taxable year.

(b) Each shareholder's pro rata share of any item for any taxable year shall be the sum of the amounts determined with respect to the shareholder by assigning an equal portion of all items to each day of the taxable year and then by dividing that portion pro rata among the shares outstanding on such day.

(c) The character of any item included in the shareholder's pro rata share shall be determined as if such item were realized directly by the shareholder from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation.

(d) With respect to any deduction allowed pursuant to section 307.8(e), any nonresident shareholder shall be allowed such deduction only to the extent that the previously disallowed deduction would have been considered a deduction related to income from sources within this Commonwealth, within the meaning of section 301(k), during the taxable year when the deduction was disallowed.

(e) For all purposes of this article, a qualified Subchapter S subsidiary owned by a Pennsylvania S corporation shall not be treated as a separate corporation, and all assets, liabilities and items of income, deduction and credit of such qualified Subchapter S subsidiary shall be treated as assets, liabilities and items of income, deduction and credit of the parent Pennsylvania S corporation.

Section 9. Article III of the act is amended by adding a part to read:

PART VI-A
CONTRIBUTIONS OF REFUNDS BY CHECKOFF

Section 315.1. Definitions.—The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

"Individual income tax." The tax imposed under this article.

Section 315.2. Contributions to Breast and Cervical Cancer Research.—(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily

designate a contribution of any amount desired to be utilized for breast and cervical cancer research in the Department of Health.

(b) The amount so designated on the individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due to the Commonwealth.

(c) The department shall determine annually the total amount designated under this section, less reasonable administrative costs, and shall report the amount to the State Treasurer who shall transfer the amount from the General Fund to the Pennsylvania Cancer Control, Prevention and Research Advisory Board within the Department of Health.

(d) The department shall provide adequate information concerning the checkoff for breast and cervical cancer research in its instructions which accompany State income tax return forms. The information concerning the checkoff shall include the listing of an address furnished by the Department of Health to which contributions may be sent by taxpayers wishing to contribute to this effort but who do not receive refunds. Additionally, the Department of Health shall be charged with the duty to conduct a public information campaign on the availability of this opportunity to Pennsylvania taxpayers.

(e) The Department of Health shall report annually to the respective committees of the Senate and the House of Representatives which have jurisdiction over health matters on the amount received via the checkoff plan and how the funds were utilized.

(f) The General Assembly may, from time to time, appropriate funds for breast and cervical cancer research within the Department of Health.

Section 315.3. Contributions for Wild Resource Conservation.—(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the Wild Resource Conservation Fund established under section 5 of the act of June 23, 1982 (P.L.597, No.170), known as the "Wild Resource Conservation Act."

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The department shall determine annually the total amount designated pursuant to this section and shall report such amount to the State Treasurer who shall transfer such amount from the General Fund to the Wild Resource Conservation Fund for use as provided in the "Wild Resource Conservation Act." The department shall be reimbursed from the fund for any administrative costs incurred above and beyond the cost savings it realizes as a result of individual total refund designations.

(d) The department shall provide adequate information concerning the Wild Resource Conservation Fund in its instructions which accompany

State income tax return forms, which shall include the listing of an address furnished to it by the Wild Resource Conservation Board to which contributions may be sent by those taxpayers wishing to contribute to said fund but who do not receive refunds.

(e) This section shall apply to taxable years beginning on or after January 1, 1997.

Section 315.4. Contributions for Organ Donation Awareness.—(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the Organ Donation Awareness Trust Fund established under 20 Pa.C.S. § 8622 (relating to Organ Donation Awareness Trust Fund).

(b) The amount so designated by an individual on the Pennsylvania individual income tax return form shall be deducted from the tax refund to which the individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The department shall annually determine the total amount designated pursuant to this section and shall report that amount to the State Treasurer who shall transfer that amount to the Organ Donation Awareness Trust Fund.

(d) The department shall, in all taxable years following the effective date of this section, provide on its forms or in its instructions which accompany Pennsylvania individual income tax return forms adequate information concerning the Organ Donation Awareness Trust Fund which shall include the listing of an address furnished to it by the Organ Donation Advisory Committee to which contributions may be sent by those taxpayers wishing to contribute to the fund but who do not receive refunds.

(e) This section shall apply to taxable years beginning on or after January 1, 1997.

Section 315.5. Contributions for Olympics.—(a) The department shall provide a space on the Pennsylvania individual income tax return form whereby an individual may voluntarily designate a contribution of any amount desired to the United States Olympic Committee, Pennsylvania Division.

(b) The amount so designated by an individual on the income tax return form shall be deducted from the tax refund to which such individual is entitled and shall not constitute a charge against the income tax revenues due the Commonwealth.

(c) The department shall determine annually the total amount designated pursuant to this section, less reasonable administrative costs, and shall report such amount to the State Treasurer who shall transfer such amount from the General Fund to the United States Olympic Committee, Pennsylvania Division.

Section 10. Section 324 of the act, amended June 16, 1994 (P.L.279, No.48), is amended to read:

Section 324. General Rule.—*(a)* When a partnership, association or Pennsylvania S corporation receives income from sources within this Commonwealth for any taxable year and any portion of such income is allocable to a nonresident partner, member or shareholder thereof, such partnership, association or Pennsylvania S corporation shall pay a withholding tax under this section at such time and in such manner as the department shall prescribe; however, notwithstanding any other provision of this article, all such withholding tax shall be paid over on or before the fifteenth day of the fourth month following the end of the taxable year.

(b) This section shall not apply to any publicly traded partnership as defined under section 7704 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 7704) with equity securities registered with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a).

Section 11. Section 324.2 of the act, added August 4, 1991 (P.L.97, No.22), is amended to read:

Section 324.2. Treatment of Nonresident Partners, Members or Shareholders.—Each nonresident partner, member **[or]**, shareholder ***or holder of a beneficial interest*** shall be allowed a credit for such partner's, member's **[or]**, shareholder's ***or holder of a beneficial interest's*** share of the withholding tax paid by the partnership, association or Pennsylvania S corporation. Such credit shall be allowed for the partner's, member's **[or]**, shareholder's ***or holder of a beneficial interest's*** taxable year in which, or with which, the partnership, association or Pennsylvania S corporation taxable year (for which such tax was paid) ends.

Section 12. Section 350 of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

Section 350. Limitations on Refund or Credit.—Any application for refund must be filed with the **[Board of Finance and Revenue within three years from the time the return is required to be filed]** ***department under section 3003.1.***

Section 13. Section 352(g) of the act, amended June 29, 1984 (P.L.445, No.94), is amended and the section is amended by adding a subsection to read:

Section 352. Additions, Penalties and Fees.—* * *

[(g) Whenever any check issued in payment of any tax, or for any other purpose required by this article, shall be returned to the department as uncollectible, the department shall charge a fee of ten per cent of the face amount thereof, plus all protest fees, to the person presenting such check to the department, to cover the cost of its collection in addition to the interest and penalties otherwise provided for in this article: Provided, that the additions imposed by this subsection shall not exceed two hundred dollars ($200) nor be less than ten dollars ($10).]

* * *

(j) If any amount of tax required to be withheld by a partnership, association or Pennsylvania S corporation and paid over to the department under section 324 is not paid on or before the date prescribed therefor, there shall be added to the tax and paid to the department each month five per cent of such underpayment for each month or fraction thereof from the due date, for the period from the due date to the date paid; but the underpayment shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid by the beginning of that month. The total of such additions shall not exceed fifty per cent of the amount of such tax.

Section 14. Section 401(1) of the act, amended June 16, 1994 (P.L.279, No.48), is amended and clause (3)1 is amended by adding a phrase to read:

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

(1) "Corporation." A corporation **[having capital stock]**, joint-stock association, **[or limited partnership either organized under the laws of this Commonwealth, the United States, or any other state, territory, or foreign country, or dependency,]** or a business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies **[and]**, ***a common law business trust or a limited liability company,*** that for Federal income tax purposes is taxable as a corporation, and (i) ***is*** doing business in this Commonwealth; or (ii) ***is*** carrying on activities in this Commonwealth; (iii) **[having]** ***has*** capital or property employed or used in this Commonwealth; or (iv) **[owning]** ***owns*** property in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association or corporation. The word "corporation" shall not include building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies and Pennsylvania S corporations. The word shall not include:

1. Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

2. Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign

business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

3. Any nonprofit corporation, trust or other entity that is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501).

4. Any corporation organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state.

* * *

(3) "Taxable income." 1. * * *

(p) For taxable years beginning on or after January 1, 1998, in the case of a corporation that is a Pennsylvania S corporation, as defined in section 301(n.1), the term "taxable income" shall mean such corporation's net recognized built-in gain to the extent of and as determined for Federal income tax purposes under section 1374(d)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1374). For purposes of this article, a Pennsylvania S corporation and each qualified Subchapter S subsidiary, as defined in section 301(o.3), shall be treated as separate corporations.

* * *

Section 15. The definitions of "average net income," "capital stock," "capital stock value," "domestic entity," "foreign entity," "net worth" and "processing" in section 601(a) of the act, amended or added July 1, 1985 (P.L.78, No.29), July 2, 1986 (P.L.318, No.77), June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), are 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:

"Average net income." The sum of the net income or loss for each of the current and immediately preceding four years, divided by five. If the entity has not been in existence for a period of five years, the average net income shall be the average net income for the number of years that the entity has actually been in existence. In computing average net income, losses shall be entered as computed, but in no case shall average net income be less than zero. The net income or loss of the entity for any taxable year shall be the amount set forth as income per books on the income tax return filed by the entity with the Federal Government for such taxable year, or if no such return is made, as would have been set forth had such a return been made, subject, however, in either case to any correction thereof, for fraud, evasion or error. In the case of any entity which has an investment in another corporation, the net income or loss shall be computed on an unconsolidated basis exclusive of the net income or loss of such other corporation. ***In the case of a limited liability company or business trust taxable as a partnership for Federal income tax purposes, the net income or loss of the limited liability company***

or business trust for any given year shall be reduced by the amount of distributions made by such limited liability company or business trust to any member of such limited liability company or business trust who is deemed to be materially participating in the activities conducted by such limited liability company or business trust for purposes of section 469 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 469). For this purpose, distributions which are made to a member of a limited liability company or business trust within thirty (30) days of the end of a given year may be treated as having been made in the preceding year and not in the year in which such distribution is actually made.

"Capital stock." The capital stock **[of an entity]**, ***certificates, memberships*** and all other interests in a domestic or foreign **[corporation]** ***entity.***

"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 **[one hundred thousand dollars ($100,000)]** ***one hundred twenty-five thousand dollars ($125,000)***, the algebraic equivalent of which is

(.5 X (average net income/.095 + (.75)
(net worth))) - **[$100,000]** ***$125,000***

* * *

"Domestic entity." Every corporation **[having capital stock]**, every joint-stock association, **[limited partnership and every company whatsoever, now or hereafter organized or incorporated by or under any laws of the Commonwealth,]** ***or*** every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies **[and that for Federal income tax purposes is taxable as a corporation]**, ***every common law business trust or every limited liability company other than a restricted professional corporation subject to 15 Pa.C.S. Ch. 89 (relating to limited liability companies) organized or incorporated by or under any laws of the Commonwealth,*** other than corporations of the first class, nonprofit corporations, ***trusts or other entities that are exempt organizations as defined in section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501), corporations organized as not-for-profit under the laws of the Commonwealth or the laws of any other state*** and cooperative agricultural associations not having capital stock and not conducted for profit, banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a domestic entity. The term "domestic entity" shall not include:

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance,

administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

* * *

"Foreign entity." Every corporation, joint-stock association, **[limited partnership and company whatsoever, now or hereafter incorporated or organized by or under the law of any other state or territory of the United States, or by the United States, or by or under the law of any foreign government,]** ***or*** every business trust to which 15 Pa.C.S. Ch. 95 (relating to business trusts) applies **[and that for Federal income tax purposes is taxable as a corporation]**, ***common law business trust, or every limited liability company other than a restricted professional corporation subject to 15 Pa.C.S. Ch. 89 (relating to limited liability companies) incorporated or organized by or under the laws of any jurisdiction other than the Commonwealth,*** and doing business in and liable to taxation within the Commonwealth or carrying on activities in the Commonwealth, including solicitation or either owning or having capital or property employed or used in the Commonwealth by or in the name of any limited partnership or joint-stock association, copartnership or copartnerships, person or persons, or in any other manner doing business within and liable to taxation within the Commonwealth other than nonprofit corporations, ***trusts or other entities that are exempt organizations as defined in section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501), corporations organized as not-for-profit under the laws of a jurisdiction other than the Commonwealth,*** banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies is a foreign entity. The term "foreign entity" shall not include:

(1) Any domestic or foreign business trust that qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of real estate investment trusts or qualified real estate investment trust subsidiaries. A qualified real estate investment trust subsidiary under section

856(i) of the Internal Revenue Code shall be treated as part of the real estate investment trust that owns all of the stock of the qualified real estate investment trust subsidiary.

(2) Any domestic or foreign business trust that qualifies as a regulated investment company under section 851 of the Internal Revenue Code and is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or any related domestic or foreign business trust which confines its activities in this Commonwealth to the maintenance, administration and management of intangible investments and activities of regulated investment companies.

* * *

"Net worth."

(1) Net worth shall be the sum of the entity's issued and outstanding capital stock, surplus and undivided profits as per books set forth for the close of such tax year on the income tax return filed by the entity with the Federal Government, or if no such return is made, as would have been set forth had such return been made, subject, however, in either case to any correction thereof for fraud, evasion or error. In the case of any entity which has investments in **[the common stock of]** other corporations, the net worth shall be the consolidated net worth of such entity computed in accordance with generally accepted accounting principles. ***In the case of a limited liability company or a business trust, net worth for any tax year shall be the entity's assets minus its liabilities as of the close of such tax year.*** Net worth shall in no case be less than zero.

(2) If net worth as arrived at under clause (1) for the current tax year is greater than twice or less than one-half of the net worth which would have been calculated under clause (1) as of the first day of the current tax year, then net worth for the current tax year shall be the average of these two amounts.

"Processing." The following activities when engaged in as a business enterprise:

(1) The filtering or heating of honey, the cooking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats or poultry, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(1.1) The processing of vegetables by cleaning, cutting, coring or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

(4) The rolling, drawing or extruding of ferrous and nonferrous metals.

(5) The fabrication for sale of ornamental or structural metal or metal stairs, staircases, gratings, fire escapes or railings (not including fabrication work done at the construction site).

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of nonalcoholic beverages for wholesale distribution.

(8) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products, including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(9) The operation of a sawmill or planing mill for the production of lumber or lumber products for sale.

(10) The milling for sale of flour or meal from grains.

(10.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(11) The publishing of books, newspapers, magazines or other periodicals, printing and broadcasting radio and television programs by licensed commercial or educational stations.

(12) The processing of used lubricating oils.

(13) The blending, rectification or production by distillation or otherwise of alcohol or alcoholic liquors, except the distillation of alcohol from byproducts of winemaking for the sole purpose of fortifying wine.

(14) The salvaging, recycling or reclaiming of used materials to be recycled into a manufacturing process.

(15) The development or substantial modification of computer programs or software for sale to unrelated persons for their direct and independent use.

* * *

Section 16. The act is amended by adding sections to read:

Section 602.4. Separate Entities.—For purposes of this article, each Pennsylvania S corporation and each qualified Subchapter S subsidiary, as defined in section 301(o.3), shall be treated as separate corporations.

Section 602.5. Shows and Flea Markets.—A corporation that confines its activities in this Commonwealth during the course of a calendar year to attendance at an organized "show" or "flea market" for the purpose of exhibiting its goods and making sales therefrom shall not be subject to the

minimum tax imposed under this article[1], based solely upon such attendance if limited to no more than twenty days during the year, with no more than five days being consecutive.

Section 17. Section 1101-C of the act is amended by adding definitions to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section:

* * *

"Living trust." Any trust, other than a business trust, intended as a will substitute by the settlor which becomes effective during the lifetime of the settlor, but from which trust distributions cannot be made to any beneficiaries other than the settlor prior to the death of the settlor.

* * *

"Ordinary trust." Any trust, other than a business trust or a living trust, which takes effect during the lifetime of the settlor and for which the trustees of the trust take title to property primarily for the purpose of protecting, managing or conserving it until distribution to the named beneficiaries of the trust. An ordinary trust does not include a trust that has an objective to carry on business and divide gains, nor does it either expressly or impliedly have any of the following features: the treatment of beneficiaries as associates, the treatment of the interests in the trust as personal property, the free transferability of beneficial interests in the trust, centralized management by the trustee or the beneficiaries, or continuity of life.

* * *

Section 18. Section 1102-C.3(8), (9) and (18) of the act, amended or added July 2, 1986 (P.L.318, No.77) and July 1, 1989 (P.L.95, No.21), are amended and the section is amended by adding clauses to read:

Section 1102-C.3. Excluded Transactions.—The tax imposed by section 1102-C shall not be imposed upon:

* * *

(8) A transfer for no or nominal actual consideration to a trustee of an ordinary trust where the transfer of the same property would be exempt if the transfer was made directly from the grantor to all of the possible beneficiaries ***that are entitled to receive the property or proceeds from the sale of the property under the trust,*** whether or not such beneficiaries are contingent or specifically named. ***A trust clause which identifies the contingent beneficiaries by reference to the heirs of the trust settlor as determined by the laws of the intestate succession shall not disqualify a transfer from the exclusion provided by this clause.*** No such exemption shall be granted unless the recorder of deeds is presented with a copy of the trust instrument that clearly identifies the grantor and all possible beneficiaries.

---

[1]"Article VI" in enrolled bill.

(8.1) A transfer for no or nominal actual consideration to a trustee of a living trust from the settlor of the living trust. No such exemption shall be granted unless the recorder of deeds is presented with a copy of the living trust instrument.

(9) A transfer for no or nominal actual consideration from a trustee [to a beneficiary of an ordinary trust.] *of an ordinary trust to a specifically named beneficiary that is entitled to receive the property under the recorded trust instrument or to a contingent beneficiary where the transfer of the same property would be exempt if the transfer was made by the grantor of the property into the trust to that beneficiary. However, any transfer of real estate from a living trust during the settlor's lifetime shall be considered for the purposes of this article as if such transfer were made directly from the settlor to the grantee.*

(9.1) A transfer for no or nominal actual consideration from a trustee of a living trust after the death of the settlor of the trust or from a trustee of a trust created pursuant to the will of a decedent to a beneficiary to whom the property is devised or bequeathed.

(9.2) A transfer for no or nominal actual consideration from the trustee of a living trust to the settlor of the living trust if such property was originally conveyed to the trustee by the settlor.

* * *

(18) A transfer to a conservancy which possesses a tax-exempt status pursuant to section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)) and which has as its primary purpose preservation of land for historic, recreational, scenic, agricultural or open-space opportunities[,]; or a transfer from such a conservancy to the United States, the Commonwealth or to any of their instrumentalities, agencies or political subdivisions[.]; *or any transfer from such a conservancy where the real estate is encumbered by a perpetual agricultural conservation easement as defined by the act of June 30, 1981 (P.L.128, No.43), known as the "Agricultural Area Security Law," and such conservancy has owned the real estate for at least two years immediately prior to the transfer.*

* * *

Section 19. Section 1113-C of the act, added July 2, 1986 (P.L.318, No.77), is amended to read:

Section 1113-C. Refunds.—(a) Whenever the amount due upon determination, redetermination or review is less than the amount paid to the department on account thereof, the department shall enter a credit in the amount of such difference to the account of the person who paid the tax.

(b) Where there has been no determination of unpaid tax, the department shall have the power, and its duty shall be, to hear and decide any application for refund and, upon the allowance of such application, to enter a credit in the amount of the overpayment to the account of the person who paid the tax. Such application must be filed [within two years after the date of payment] *under section 3003.1.*

Section 20. Section 1253 of the act, added December 21, 1981 (P.L.482, No.141), is amended to read:

Section 1253. Limitations.—Claims for refund or allowance of tax imposed by this article shall be filed **[within one year from the date of payment of the tax or from the date of the occurrence giving rise to the refund or allowance]** ***under section 3003.1*** and shall be in such form and contain such information as the department shall, by regulation, prescribe.

Section 21. Section 1296 of the act, amended August 4, 1991 (P.L.97, No.22), is amended to read:

Section 1296. Disposition of Certain Funds.—All cigarette tax revenues collected by the Department of Revenue under this article and heretofore paid into the Parent Reimbursement Fund in accordance with the act of August 27, 1971 (P.L.358, No.92), known as the "Parent Reimbursement Act for Nonpublic Education," shall be transferred into the General Fund. Beginning July 1, 1993, two thirty-firsts of cigarette tax receipts shall be transferred into the Agricultural Conservation Easement Purchase Fund, and beginning **[July 1, 1992, two thirty-firsts]** ***January 1, 1997, three thirty-firsts*** of cigarette tax receipts shall be paid into a restricted account to be known as the Children's Health Fund for health care for indigent children, and the remainder shall be paid into the General Fund. Moneys in the Children's Health Fund shall not be expended until the enactment of legislation to implement a program of expanded access to health care for children. The transfers required by this section shall be made by July 15 for the preceding six months and by January 15 for the preceding six months.

Section 22. The heading of Article XVI-A of the act is amended to read:

ARTICLE XVI-A
[PASSENGER CAR] ***VEHICLE*** RENTAL TAX

Section 23. Sections 1601-A, 1602-A, 1603-A and 1604-A of the act, added June 16, 1994 (P.L.279, No.48), are amended to read:

Section 1601-A. Definitions.—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"**[Motor]** ***Rental*** vehicle." A private passenger motor vehicle designed to transport fifteen or fewer passengers ***or a truck, trailer or semitrailer used in the transportation of property other than commercial freight,*** that is rented without a driver and is part of a fleet of five or more **[passenger]** ***rental*** vehicles used for that purpose, owned or leased by the same person or entity.

"Vehicle rental company." Any business entity engaged in the business of renting motor vehicles in this Commonwealth.

Section 1602-A. **[Passenger Car]** ***Vehicle*** Rental Tax.—(a) Each vehicle rental company shall collect, at the time the **[motor]** ***rental*** vehicle is rented in this Commonwealth, on each rental contract for a period of twenty-nine or

fewer consecutive days, a tax equal to two per cent of the purchase price of the rental.

Section 1603-A. Reporting and Remittance of Tax.—(a) The tax shall be reported and remitted in the same manner as the tax imposed by Article XXIII of this act, except that, no later than February 15 of each calendar year, each vehicle rental company shall file a report with the Department of Revenue on a form prescribed by the department. The report shall include the amount of tax remitted during the previous calendar year and the total amount of **[motor]** ***rental*** vehicle licensing and title fees imposed by the Commonwealth under 75 Pa.C.S. (relating to vehicles) on the vehicle rental company's **[motor]** ***rental*** vehicles and paid to the Commonwealth by the vehicle rental company in the previous calendar year.

(b) When reconciling the reports and remittances filed during the previous calendar year with the annual report, the department shall allow against the tax imposed by subsection (a) a credit equal to the total amount of licensing and title fees imposed by the Commonwealth under 75 Pa.C.S. on the vehicle rental company's **[motor]** ***rental*** vehicles and paid to the Commonwealth by the vehicle rental company in the previous calendar year. The department shall refund to the taxpayer the credit verified from the annual report. The amount of such verified credit shall not exceed the amount of tax collected and remitted by the taxpayer for the calendar year for which the claim is made. If the amount of the tax collected exceeds the amount of licensing fees and title fees paid the Commonwealth, the excess collection shall be deposited by the department into the General Fund.

(c) Unless otherwise noted, the provisions of Article II of this act shall apply to the tax required under this article.

Section 1604-A. Application.—This article shall apply to all rental contracts entered into on or after July 1, **[1994]** ***1997***.

Section 24. The act is amended by adding an article to read:

ARTICLE XVII-B
RESEARCH AND DEVELOPMENT TAX CREDIT

Section 1701-B. Short Title.—This article shall be known and may be cited as the Research and Development Tax Credit Law.

Section 1702-B. Definitions.—The following words and phrases, when used in this article, shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

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

"Gross receipts." Gross receipts for any taxable year shall consist only of gross receipts which are effectively connected with the conduct of a trade or business within this Commonwealth. The determination of whether gross receipts are effectively connected with the conduct of a trade or business within this Commonwealth shall be made by reference to the standard established in section 401(3)2(a)(16) and (17) of this act.

"Internal Revenue Code." The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Pennsylvania base amount." Base amount as defined in section 41(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 41(c)), except that references to "qualified research expense" shall mean "Pennsylvania qualified research and development expense" and references to "qualified research" shall mean "Pennsylvania qualified research and development." References to "fixed base percentage" shall mean the percentage which the Pennsylvania qualified research and development expense for the four taxable years immediately preceding the taxable year in which the expense is incurred is to the gross receipts for such years. The fixed base percentage for a taxpayer who has fewer than four but at least one taxable year shall be determined in the same manner using the number of immediately preceding taxable years to arrive at the percentage.

"Pennsylvania qualified research and development." Qualified research and development as defined in section 41(d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 41(d)) that is conducted in this Commonwealth.

"Pennsylvania qualified research and development expense." Qualified research expense as defined in section 41(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.C.S. § 41(b)) incurred for Pennsylvania qualified research and development.

"Qualified tax liability." The liability for taxes imposed under Article III, IV or VI of this act. The term shall include the liability for taxes imposed under Article III on a shareholder of a Pennsylvania S corporation.

"Research and development tax credit." The credit provided under this article.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Small business." A for-profit corporation, limited liability company, partnership or proprietorship with net book value of assets totaling, at the beginning or end of the taxable year for which Pennsylvania qualified research and development expense is incurred, as reported on the balance sheet, less than five million dollars ($5,000,000).

"Taxpayer." An entity subject to tax under Article III, IV or VI of this act. The term shall include the shareholder of a Pennsylvania S corporation that receives a research and development tax credit.

Section 1703-B. Credit for Research and Development Expenses.—(a) A taxpayer who incurs Pennsylvania qualified research and development expense in a taxable year may apply for a research and development tax credit as provided in this article. By September 15, a taxpayer must submit an application to the department for Pennsylvania qualified research and development expense incurred in the taxable year that ended in the prior calendar year.

(b) A taxpayer that is qualified under subsection (a) shall receive a research and development tax credit for the taxable year in the amount of ten per cent of the excess of the taxpayer's total Pennsylvania qualified research and development expense for the taxable year over the taxpayer's Pennsylvania base amount.

(c) By December 15 of the calendar year following the close of the taxable year during which the Pennsylvania qualified research and development expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's research and development tax credit approved by the department.

Section 1704-B. Carryover, Carryback, Refund and Assignment of Credit.—(a) The amount of the research and development tax credit that a taxpayer may use against any one qualified tax liability during any year may not exceed fifty per cent of such qualified tax liability for that taxable year. If the taxpayer cannot use the entire amount of the research and development tax credit for the taxable year in which the research and development tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the research and development tax credit is carried over to a succeeding taxable year, it is to be reduced by the amount that was used as a credit during the immediately preceding taxable year. The research and development tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than fifteen taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) A research and development tax credit approved by the department for Pennsylvania qualified research and development expense in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the research and development tax credit is applied against any tax liability under subsection (a).

(c) A taxpayer is not entitled to carry back, obtain a refund of or assign an unused research and development tax credit.

Section 1705-B. Application of Internal Revenue Code.—The provisions of section 41 of the Internal Revenue Code and the regulations promulgated regarding those provisions shall apply to the department's interpretation and administration of the credit provided by this article. References to the Internal Revenue Code shall mean the sections of the Internal Revenue Code as existing on any date of interpretation of this article. However, if those sections of the Internal Revenue Code referenced in this article are repealed or terminated, references to the Internal Revenue Code shall mean those sections last having full force and effect. If after repeal or termination the Internal Revenue Code sections are revised or reenacted, references herein to Internal Revenue Code sections shall mean those revised or reenacted sections.

Section 1706-B. Determination of Qualified Research and Development Expenses.—In prescribing standards for determining which qualified research and development expense are considered Pennsylvania qualified research and development expense for purposes of computing the credit provided by this article, the department may consider:

(1) The location where the services are performed.

(2) The residence or business location of the person or persons performing the service.

(3) The location where qualified research and development supplies are consumed.

(4) Other factors that the department determines are relevant for the determination.

Section 1707-B. Time Limitations.—A taxpayer is not entitled to a research and development tax credit for Pennsylvania qualified research and development expenses incurred in taxable years ending after December 31, 2004. The termination date in section 41(h) of the Internal Revenue Code does not apply to a taxpayer who is eligible for the research and development tax credit under this article for the taxable year in which the Pennsylvania qualified research and development expense is incurred.

Section 1708-B. Transitional Rule.—For the purpose of calculating Pennsylvania qualified research and development expense used in calculating the Pennsylvania base amount for taxable years ending after 1991 and before 1997, if the taxpayer has incurred qualified research and development expense both inside and outside this Commonwealth and is unable to determine the amount of Pennsylvania qualified research and development expense, the taxpayer may calculate Pennsylvania qualified research and development expense by multiplying qualified research and development expense everywhere by the average of the payroll and property factors calculated in accordance with Article IV of this act for the corresponding taxable years in question.

Section 1709-B. Limitation on Credits.—(a) The total amount of credits approved by the department shall not exceed fifteen million dollars ($15,000,000) in any fiscal year. Of that amount, three million dollars ($3,000,000) shall be allocated exclusively for small businesses. However, if the total amounts allocated to either the group of applicants exclusive of small businesses or the group of small business applicants is not approved in any fiscal year, the unused portion will become available for use by the other group of qualifying taxpayers.

(b) If the total amount of research and development tax credits applied for by all taxpayers, exclusive of small businesses, exceeds the amount allocated for those credits, then the research and development tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the research and development tax credit applied for by the applicant divided by the total of all research and

development credits applied for by all applicants, the algebraic equivalent of which is:

taxpayer's research and development tax credit=amount allocated for those credits X (research and development tax credit applied for by the applicant/total of all research and development tax credits applied for by all applicants).

(c) If the total amount of research and development tax credits applied for by all small business taxpayers exceeds the amount allocated for those credits, then the research and development tax credit to be received by each small business applicant shall be the product of the allocated amount multiplied by the quotient of the research and development tax credit applied for by the small business applicant divided by the total of all research and development credits applied for by all small business applicants, the algebraic equivalent of which is:

taxpayer's research and development tax credit=amount allocated for those credits X (research and development tax credit applied for by the small business/total of all research and development tax credits applied for by all small business applicants).

Section 1710-B. Pennsylvania S Corporation Shareholder Pass-Through.—(a) If a Pennsylvania S corporation does not have an eligible tax liability against which the research and development tax credit may be applied, a shareholder of the Pennsylvania S corporation is entitled to a research and development tax credit equal to the research and development tax credit determined for the Pennsylvania S corporation for the taxable year multiplied by the percentage of the Pennsylvania S corporation's distributive income to which the shareholder is entitled.

(b) The credit provided under subsection (a) is in addition to any research and development tax credit to which a shareholder of a Pennsylvania S corporation is otherwise entitled under this article. However, a Pennsylvania S corporation and a shareholder of a Pennsylvania S corporation may not claim a credit under this article for the same qualified research and development expense.

Section 1711-B. Report to General Assembly.—The secretary shall submit an annual report to the General Assembly indicating the effectiveness of the credit provided by this article no later than March 15 following the year in which the credits were approved. The report shall include the number of taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized. The report may also include any recommendations for changes in the calculation or administration of the credit.

Section 1712-B. Termination.—The department shall not approve a research and development tax credit under this article for taxable years ending after December 31, 2004.

Section 1713-B. Regulations.—The secretary shall promulgate regulations necessary for the implementation and administration of this article.

Section 25. Section 1902-A of the act, amended or added June 16, 1994 (P.L.279, No.48) and July 1, 1994 (P.L.413, No.67), is amended to read:

Section 1902-A. Definitions.—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Business firm." Any business entity authorized to do business in this Commonwealth and subject to taxes imposed by Article IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV of this act.

"Community services." Any type of counseling and advice, emergency assistance or medical care furnished to individuals or groups in an impoverished area.

"Comprehensive service plan." A strategy developed jointly by a neighborhood organization and a sponsoring business firm or private company for the stabilization and improvement of an impoverished area within an urban neighborhood or rural community.

"Comprehensive service project." Any activity conducted jointly by a neighborhood organization and a sponsoring business firm which implements a comprehensive service plan.

"Crime prevention." Any activity which aids in the reduction of crime in an impoverished area.

"Education." Any type of scholastic instruction or scholarship assistance to an individual who resides in an impoverished area that enables **[him to prepare himself]** ***that individual to prepare*** for better life opportunities.

"Enterprise zones." Specific locations with identifiable boundaries within impoverished areas which are designated as enterprise zones by the **[Secretary of Community Affairs]** ***Secretary of Community and Economic Development.***

"Impoverished area." Any area in this Commonwealth which is certified as such by the **[Department of Community Affairs]** ***Department of Community and Economic Development*** and the certification is approved by the Governor. Such certification shall be made on the basis of Federal census studies and current indices of social and economic conditions.

"Job training." Any type of instruction to an individual who resides in an impoverished area that enables **[him]** ***that individual*** to acquire vocational skills so that **[he]** ***the individual*** can become employable or be able to seek a higher grade of employment.

"Neighborhood assistance." Furnishing financial assistance, labor, material and technical advice to aid in the physical improvement of any part or all of an impoverished area.

"Neighborhood organization." Any organization performing community services, offering neighborhood assistance or providing job training, education or crime prevention in an impoverished area, holding a ruling from the

Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and approved by the Department of Community Affairs.

"Private company." Any agricultural, industrial, manufacturing or research and development enterprise as defined in section 3 of the act of May 17, 1956 (1955 P.L.1609, No.537), known as the "Pennsylvania Industrial Development Authority Act," or any commercial enterprise as defined in section 3 of the act of August 23, 1967 (P.L.251, No.102), known as the "Economic Development Financing Law."

"Qualified investments." Any investments made by a private company which promote community economic development pursuant to a plan which has been developed in cooperation with and approved by a neighborhood organization operating pursuant to a plan for the administration of tax credits approved by the **[Department of Community Affairs]** ***Department of Community and Economic Development.***

"Secretary." The Secretary of Community and Economic Development of the Commonwealth.

Section 26. Sections 1904-A and 1905-A of the act, amended or added June 16, 1994 (P.L.279, No.48) and June 30, 1995 (P.L.139, No.21), are amended to read:

Section 1904-A. Tax Credit.—(a) Any business firm which engages or contributes to a neighborhood organization which engages in the activities of providing neighborhood assistance, job training or education for individuals, community services or crime prevention in an impoverished area or private company which makes qualified investment to rehabilitate, expand or improve buildings or land located within portions of impoverished areas which have been designated as enterprise zones shall receive a tax credit as provided in section 1905-A if the **[Secretary of Community Affairs]** ***secretary*** annually approves the proposal of such business firm or private company. The proposal shall set forth the program to be conducted, the impoverished area selected, the estimated amount to be invested in the program and the plans for implementing the program.

(b) The **[Secretary of Community Affairs]** ***secretary*** is hereby authorized to promulgate rules and regulations for the approval or disapproval of such proposals by business firms or private companies and provide a listing of all applications received and their disposition in each fiscal year to the General Assembly by October 1 of the following fiscal year.

(c) The total amount of tax credit granted for programs approved under this act shall not exceed **[sixteen million seven hundred fifty thousand dollars ($16,750,000)]** ***eighteen million dollars ($18,000,000)*** of tax credit in any fiscal year, subject to the following:

(1) **[two million dollars ($2,000,000)]** ***three million two hundred fifty thousand dollars ($3,250,000)*** of the total amount of tax credit shall be allocated for comprehensive service projects, but the **[Secretary of**

Community Affairs] ***secretary*** may reallocate any unused portion of the **[two million dollars ($2,000,000)]** ***three million two hundred fifty thousand dollars ($3,250,000)*** for any other program authorized by this act if insufficient applications are made for comprehensive service projects; and

(2) four million dollars ($4,000,000) of the total amount of tax credit shall be set aside exclusively for private companies which make qualified investments to rehabilitate, expand or improve buildings or land which promote community economic development and which occur in portions of impoverished areas which have been designated as enterprise zones.

Section 1905-A. Grant of Tax Credit.—The Department of Revenue shall grant a tax credit against any tax due under Article IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV of this act, or any tax substituted in lieu thereof in an amount which shall not exceed fifty per cent of the total amount invested during the taxable year by the business firm or twenty per cent of qualified investments by a private company in programs approved pursuant to section 1904-A of this act: Provided, That a tax credit of up to seventy per cent of the total amount invested during the taxable year by a business firm or up to thirty per cent of the amount of qualified investments by a private company may be allowed for investment in programs where activities fall within the scope of special program priorities as defined with the approval of the Governor in regulations promulgated by the **[Secretary of the Department of Community Affairs]** ***secretary.*** Regulations establishing special program priorities are to be promulgated during the first month of each fiscal year and at such times during the year as the public interest dictates. Such credit shall not exceed two hundred fifty thousand dollars ($250,000) annually, except in the case of comprehensive service projects which shall be allowed an additional credit equal to seventy per cent of the qualifying investments made in comprehensive service projects; however, such additional credit shall not exceed **[one hundred seventy-five thousand dollars ($175,000)]** ***three hundred fifty thousand dollars ($350,000)*** annually. No tax credit shall be granted to any bank, bank and trust company, insurance company, trust company, national bank, savings association, mutual savings bank or building and loan association for activities that are a part of its normal course of business. Any tax credit not used in the period the investment was made may be carried over for the next five succeeding calendar or fiscal years until the full credit has been allowed. The total amount of all tax credits allowed pursuant to this act shall not exceed **[sixteen million seven hundred fifty thousand dollars ($16,750,000)]** ***eighteen million dollars ($18,000,000)*** in any one fiscal year.

Section 27. Section 1906-A of the act, added June 16, 1994 (P.L.279, No.48), is amended to read:

Section 1906-A. Decision in Writing.—The decision of the **[Secretary of Community Affairs]** ***secretary*** to approve or disapprove a proposal pursuant to section 1904-A of this act shall be in writing, and, if it approves the proposal, it shall state the maximum credit allowable to the business firm. A

copy of the decision of the **[Secretary of Community Affairs]** ***secretary*** shall be transmitted to the Governor and to the Secretary of Revenue.

Section 28. Section 2009 of the act, added December 22, 1989 (P.L.775, No.110), is amended to read:

Section 2009. Refund of Tax.—(a) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold or shipped by him to a licensed or regular dealer in such malt or brewed beverages in another state, such manufacturer in this Commonwealth shall be entitled to a refund of the actual amount of tax paid by him, upon condition that the seller in this Commonwealth shall make affidavit that the malt or brewed beverages were so sold and shipped, and that he shall furnish from the purchaser an affidavit, or in cases where the total purchase price is five dollars ($5) or less, a written certificate in lieu of an affidavit from the purchaser, or, upon satisfactory proof that such affidavit or certificate cannot be obtained, other evidence satisfactory to the department that he has received such malt or brewed beverages for sale or consumption outside this Commonwealth, together with the name and address of the purchaser.

(b) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(c) In case any malt or brewed beverages upon which the tax has been paid by an out-of-State manufacturer and subsequently sold by an importing distributor to commissaries, ship's stores or voluntary unincorporated organizations of the armed forces personnel operating under regulations promulgated by the Secretary of Defense, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him upon condition that he shall make affidavit and furnish proof that the malt or brewed beverages were so sold.

(d) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer shall be rendered unsalable by reason of damage or destruction, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department that the malt beverages were so damaged or destroyed.

(e) In case any malt or brewed beverages upon which the tax has been paid by a manufacturer have been sold and delivered to a public service licensee who is obligated to pay the tax thereon, such manufacturer shall be entitled to a refund of the actual amount of tax paid by him, upon condition that he shall make affidavit and furnish proof satisfactory to the department of such facts.

(f) In each of the above cases the department shall**[, with the approval of the Board of Finance and Revenue,]** pay or issue to the manufacturer credits of sufficient value to cover the refund. Such credits may be used by the manufacturer for the payment of any taxes due by him to the Commonwealth. The procedure for refund in any case shall be completed by the **[Department of Revenue and the Board of Finance and Revenue]** ***department*** within sixty days after the proper affidavits have been filed with the department ***under section 3003.1.***

Section 29. Section 2181 of the act, added August 4, 1991, (P.L.97, No.22), is amended to read:

Section 2181. Refund of Tax.—(a) A refund shall be made of any tax to which the Commonwealth is not rightfully or equitably entitled provided the Commonwealth determines the refund is due or application for refund is made within the appropriate time limit as set forth in subsection (d).

(b) Interest shall be paid on refundable tax at the same rate as the interest rate on deficiencies provided for in section 2143.

(c) Refund shall be made in cash to the party who paid the tax or to his assignee or as directed by the court.

(d) Application for refund of tax shall be made within **[two]** ***three*** years after:

(1) the court has rescinded its order and adjudication of presumed death when the refund is claimed for tax paid on the transfer of the estate of a presumed decedent who is later determined to be alive;

(2) termination of litigation establishing a right to a refund; no application for refund shall be necessary when the litigation has been with the Commonwealth over liability for the tax or the amount of tax due;

(3) it has been finally determined that the whole or any part of an alleged deficiency tax, asserted by the Federal Government beyond that admitted to be payable, and in consequence of which an estate tax was paid under section 2117 was not payable;

(4) a final judgment holding that a provision of this article under which tax has been paid is unconstitutional or that the interpretation of a provision of this article under which tax has been paid was erroneous; or

(5) the date of payment, or the date of the notice of the assessment of the tax, or the date the tax becomes delinquent, whichever occurs later, in all other cases.

(e) An application for refund of tax shall be made to the **[Board of Finance and Revenue.]** ***department.***

(e.1) A petition to review the decision and order of the department on a petition for refund may be made to the Board of Finance and Revenue under this article.

(f) The action of the Board of Finance and Revenue on all applications for refund of tax may be appealed as provided for in 42 Pa.C.S. § 933 (relating to appeals from government agencies).

(g) As much of the moneys received as payment of tax under this article as shall be necessary for the payment of the refunds provided for in this article with interest is appropriated for the payment of such refunds.

Section 30. Section 3003 of the act, amended December 21, 1981 (P.L.482, No.141), June 29, 1984, (P.L.445, No.94), July 1, 1985 (P.L.78, No.29), July 2, 1986 (P.L.318, No.77), July 13, 1987 (P.L.317, No.58), October 14, 1988 (P.L.737, No.106) and June 16, 1994 (P.L.279, No.48), is amended to read:

[Section 3003. Prepayment of Tax.—(a) Notwithstanding the provisions of this act, or any other State tax law to the contrary, which required taxpayers to make payment of tentative tax, including but not limited to the capital stock and franchise tax, corporate net income and corporation income tax, gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, insurance premiums tax, mutual thrift institutions tax, net earnings tax, or other similar tax law requiring payment of tentative tax, but excluding the prepayment by institutions under Article VII and title insurance companies under Article VIII, and public utilities under Article XI-A of this act, such taxpayers, commencing with the calendar year 1970 and fiscal years beginning during the calendar year 1970 and each taxable year thereafter, on or before the fifteenth day of March for calendar year taxpayers, and on or before the fifteenth day of the third month after the close of its previous fiscal year for fiscal year taxpayers, shall report annually and pay on account of the tax due for the current year, an amount to be computed by applying the current tax rate to ninety per cent of such tax base from the immediate prior year as may be applicable with respect to the tax being reported.

(b) For the taxable years commencing with calendar year 1979 and for each taxable year thereafter, the tentative tax due for the current year 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 as may be applicable with respect to the tax being reported; except that with respect to the aforesaid gross receipts tax on public service companies, transportation by motor vehicles and trackless trolleys, other than motor vehicles for hire, and the aforesaid insurance premiums tax, such amount shall continue to be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year as may be applicable with respect to the tax being reported; except that corporations shall not be required to report or pay tentative tax with respect to the corporate net income tax on account of any taxable year commencing with calendar year 1986 and each taxable year thereafter; except that corporations shall not be required to report or pay tentative tax with respect to the capital stock and franchise tax on account of any taxable year commencing with calendar year 1988 and each taxable year thereafter; except that the tentative tax with respect to the mutual thrift

institution's tax for calendar year 1988 and fiscal years beginning in 1988 shall be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year; and except that the mutual thrift institution shall not be required to report or pay tentative tax with respect to the mutual thrift institution's tax on account of any taxable year commencing with tax year 1992 and any taxable year thereafter.

The tax imposed on shares of institutions and title insurance companies and the tax imposed on public utility realty shall be paid in the manner and within the time prescribed by Article VII, Article VIII or Article XI-A, as the case may be, but subject to the additions and interest provided in subsection (e) of this section.

(b.1) Notwithstanding the provisions of subsections (a) and (b), the tentative tax due with respect to the capital stock and franchise tax for taxable years commencing during calendar year 1986 shall be computed by applying the current tax rate to eighty-five per cent of such tax base from the year preceding the immediate prior year.

(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 shall be computed by applying the 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.

(c) Payment of taxes imposed by Articles IV, 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) A corporation with respect to the corporate net income tax imposed by Article IV 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 (a) or (b) 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:

Year In Which Tax Year Begins	First Due on the 15th day of the following months after close of the previous tax year: 4th Month	Second 6th Month	Third 9th Month	Fourth 12th Month
1978	95%	0%	5%	0%
1979	95%	0%	5%	0%
1980	80%	0%	10%	10%
1981	40%	30%	20%	10%
1982	30%	30%	25%	15%
1983 through and including 1985	25%	25%	25%	25%

Any taxpayer which has elected to compute its tentative tax liability on the aforesaid estimated basis and which has elected to report and pay said estimated tax in installments, may when reporting and paying its third or fourth installment, base such 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.

(e) For taxable years beginning prior to January 1, 1979, should it subsequently be determined that the amount of the annual or any installment payment of tentative tax due was understated by more than five per cent, there shall be added to the tax determined to be due an additional ten per cent of the understatement and said percentage addition to the understatement shall be deemed an additional tax and shall bear interest from the date the tentative tax was due.

For taxable years beginning January 1, 1979 and thereafter, should it subsequently be determined that the amount of the annual or any installment payment of tentative tax due was underpaid, there shall be imposed an additional tax of ten per cent of the underpayment and said tax shall bear interest from the date the annual or any installment payment of tentative tax was due. Failure to remit the annual or any installment of tentative tax payments on or before the due dates

prescribed in this act shall result in the assessment of interest and additions, if any, in the same manner as prescribed by law.

(f) Whenever the amount shown as due on the annual report is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code." Notification to the taxpayer by the department of the available credit under this subsection, if provided within 60 days of filing the annual report, shall be deemed a notice of final determination of the credit solely for the purposes of stopping the accruing of interest under section 806.1(c)(2)(i) of "The Fiscal Code." If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon settlement or resettlement, then interest shall be calculated on the amount of the underpayment from the date the credit was applied, assigned or refunded.]

Section 31. Section 3003.1 of the act, added July 1, 1985 (P.L.78, No.29), is amended to read:

Section 3003.1. Petitions for Refunds.—*(a) For a tax collected by the Department of Revenue, a taxpayer who has actually paid tax, interest or penalty to the Commonwealth or to an agent or licensee of the Commonwealth authorized to collect taxes may petition the Department of Revenue for refund or credit of the tax, interest or penalty. Except as otherwise provided by statute, a petition for refund must be made to the department within three years of actual payment of the tax, interest or penalty.*

(b) The department may grant a refund or credit to a taxpayer for all tax periods covered by a departmental audit. If a credit is not granted by the department in the audit report, the taxpayer must file a petition for refund within six months of the mailing date of the notice of assessment, determination or settlement.

(c) When any tax or other money has been paid to the Commonwealth under a provision of this act or any other statute subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed with the **[Board of Finance and Revenue]** ***department*** either prior or subsequent to such final judgment but must be filed within three years of the payment of which a refund is requested, or within three years of the ***assessment,*** settlement ***or determination*** of such taxes or other moneys due the Commonwealth, whichever period last expires. The **[board]** ***department*** shall have jurisdiction to hear and determine any petition for refund filed prior to such final judgment only if, at the time of the filing thereof, proceedings are pending

in a court of competent jurisdiction wherein the claims of unconstitutionality or erroneous interpretation made in the petition for refund may be established[,]; and, in such case, the [board] *department* shall not act upon the petition for refund until the final judgment determining the question or questions involved in such petition has been handed down.

(d) In the case of amounts paid as a result of an assessment, determination, settlement or appraisement, a petition for refund must be filed with the department within six months of the mailing date of the notice of assessment, determination, settlement or appraisement.

(e) A taxpayer may petition the Board of Finance and Revenue to review the decision and order of the department on a petition for refund. The petition for review must be filed with the board within ninety days of the mailing date of a decision and order of the department upon a petition for refund.

Section 32. Sections 3003.2 and 3003.3 of the act, amended October 14, 1988 (P.L.737, No.106) and August 4, 1991 (P.L.97, No.22), are amended to read:

Section 3003.2. Estimated Tax.—(a) The following taxpayers are required to pay estimated tax:

(1) Every corporation subject to the corporate net income tax imposed by Article IV of this act, commencing with the calendar year 1986 and fiscal years beginning during the calendar year 1986 and each taxable year thereafter, shall make payments of estimated corporate net income tax.

(2) Every corporation subject to the capital stock and franchise tax imposed by Article VI of this act, commencing with the calendar year 1988 and fiscal years beginning during the calendar year 1988 and each taxable year thereafter, shall make payments of estimated capital stock and franchise tax during its taxable year as provided herein.

(3) Every "mutual thrift institution" or "institution" subject to the tax imposed by Article XV of this act, commencing with the calendar year 1992 and fiscal years beginning during the calendar year 1992 and each taxable year thereafter, shall make payments of estimated mutual thrift institution tax during its taxable year.

(4) Every "insurance company" subject to the tax imposed by Article IX of this act shall make payments of estimated insurance premiums tax during its taxable year.

(5) Every person subject to the tax imposed by Article XI of this act shall make payments of estimated utilities gross receipts tax during its taxable year.

(b) The following words, terms and phrases when used in [section] *sections* 3003.2 through 3003.4 of this article shall have the following meanings ascribed to them:

(1) "Estimated tax." Estimated corporate net income tax [or], estimated capital stock and franchise tax [or], estimated mutual thrift institution tax, ***estimated insurance premiums tax or estimated utilities gross receipts tax.***

(2) "Estimated corporate net income tax." The amount which the corporation estimates as the amount of tax imposed by section 402 of Article IV for the taxable year.

(3) "Estimated capital stock and franchise tax." The amount which the corporation estimates as the amount of tax imposed by section 602 of Article VI for the taxable year.

(4) "Estimated mutual thrift institution tax." The amount which the institution estimates as the amount of tax imposed by section 1502 of Article XV for the taxable year.

(4.1) "Estimated insurance premiums tax." The amount which the insurance company estimates as the amount of tax imposed by section 902 of Article IX for the taxable year.

(4.2) "Estimated utilities gross receipts tax." The amount which the taxpayer estimates as the amount of tax imposed by section 1101 of Article XI for the taxable year.

(4.3) "Person." Any natural person, association, fiduciary, partnership, corporation or other entity, including the Commonwealth, its political subdivisions and instrumentalities and public authorities. Whenever used in any clause prescribing and imposing a penalty or imposing a fine or imprisonment, or both, the term "person," as applied to an association, shall include the members thereof and, as applied to a corporation, the officers thereof.

(4.4) "Safe harbor base year." The taxpayer's second preceding taxable year. If the second preceding taxable year is less than twelve months, then the "safe harbor base year" shall mean the taxpayer's annualized second preceding taxable year. If the taxpayer has filed only one previous report, the "safe harbor base year" shall mean the first preceding taxable year. If the first preceding taxable year is less than twelve months, then the "safe harbor base year" shall mean the taxpayer's annualized first preceding taxable year.

(5) "Taxpayer." **[A corporation required to pay a tax under Article IV or VI of this act or an institution required to pay a tax under Article XV of this act.]** ***Any person required to pay a tax imposed by Article IV, VI, IX, XI or XV of this act.***

(c) Estimated tax shall be paid as follows:

(1) Payments of estimated corporate net income tax shall be made in equal installments on or before the fifteenth day of the third, sixth, ninth and twelfth months of the taxable year. The remaining portion of the corporate net income tax due, if any, shall be paid upon the date the corporation's annual report is required to be filed without reference to any extension of time for filing such report.

(2) **[Payment of estimated capital stock and franchise tax shall be made in installments in accordance with the following schedules:**

Year In Which Tax Year Begins	First Due on the 15th day of the following months after close of the previous tax year: 3rd Month	Second 6th Month	Third 9th Month	Fourth 12th Month
1988	44%	44%	6%	6%
1989	34%	34%	16%	16%
1990	29%	29%	21%	21%
1991 and thereafter	25%	25%	25%	25%]

Payment of estimated capital stock and franchise tax shall be made in equal installments on or before the fifteenth day of the third, sixth, ninth and twelfth months of the taxable year. The remaining portion of the capital stock and franchise tax due, if any, shall be paid upon the date the corporation's annual report is required to be filed without reference to any extension of time for filing such report.

(3) **[Beginning in calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter, payment]** ***Payment*** of the estimated mutual thrift institution tax shall be made in equal installments on or before the fifteenth day of the third, sixth, ninth and twelfth months of the taxable year. The remaining portion of the mutual thrift institution tax due, if any, shall be paid upon the date the institution's annual report is required to be filed without reference to any extension of time for filing such report.

(4) Payment of the estimated insurance premiums tax shall be made in a single installment on or before the fifteenth day of March of the taxable year. The remaining portion of the insurance premiums tax due, if any, shall be paid upon the date the insurance company's annual report is required to be filed without reference to any extension of time for filing the report.

(5) Payment of the estimated utilities gross receipts tax shall be made in a single installment on or before the fifteenth day of March of the taxable year. The remaining portion of the utilities gross receipts tax due, if any, shall be paid upon the date the annual report is required to be filed without reference to any extension of time for filing the report.

(d) If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the amount of each remaining installment due, if any, shall be such as to bring the total installment payments made on account of the tax due for the current year up to an amount that would have been due had the new estimate been the basis for paying all previous installments.

(e) Every taxpayer with a taxable year of less than twelve months shall pay such installments as become due during the course of its taxable year and pay the remaining tax due on or before the due date of the annual report (determined without regard to any extension of time for filing).

(f) At the election of the taxpayer, any installment of estimated tax may be paid before the date prescribed for its payment.

(g) For all purposes of sections 3003.2 through 3003.4 of this article, estimated corporate net income tax **[and]**, estimated capital stock and franchise tax, ***estimated mutual thrift institutions tax, estimated insurance premiums tax and estimated utilities gross receipts tax*** shall be separately reported, determined and treated.

(h) The tax imposed on shares of institutions and title insurance companies and the tax imposed on public utility realty shall be paid in the manner and within the time prescribed by Article VII, VIII or XI-A of this act, but subject to the interest provided in section 3003.3 of this article.

(i) Whenever the amount shown as due on the annual report, including any settlement of the annual report, is less than the amount paid to the department on account of that amount under this article, the department shall enter a credit in the amount of the difference to the account of the taxpayer, which credit shall be immediately subject to application, assignment or refund, at the request of the taxpayer under section 1108 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," or at the initiative of the department. If the application, assignment or refund of credit under this subsection results in an underpayment of the tax due upon settlement or resettlement, interest shall be calculated on the amount of the underpayment from the date credit was applied, assigned or refunded.

Section 3003.3. Underpayment of Estimated Tax.—(a) In case of any underpayment of an installment of estimated tax by a taxpayer, there shall be imposed **[an addition to the tax]** ***interest*** for the taxable year in an amount determined at the annual rate as provided by law **[for the payment of interest]** upon the amount of the underpayment for the period of the underpayment, except that, in case of any substantial underpayment of estimated tax by a taxpayer, such **[addition to the tax]** ***interest*** for the taxable year shall be imposed in an amount determined at one hundred twenty per cent of the annual rate as provided by law **[for the payment of interest]** upon the entire underpayment for the period of the substantial underpayment. For the purpose of this subsection, a substantial underpayment shall be deemed to exist for any period during which the amount of the underpayment equals or exceeds twenty-five per cent of the cumulative amount of installments of estimated tax which would be required to be paid if the estimated tax were equal to the amount as determined in subsection (b)(1).

(b) (1) For purposes of this section, the amount of the underpayment, if any, shall be the excess of:

(i) the cumulative amount of installments which would be required to be paid as of each installment date as defined in section 3003.2(c) if the estimated tax were equal to ninety per cent of the tax shown on the report for the taxable year, except that, if the settled tax or, if the tax is resettled, the resettled tax exceeds the tax shown on the report by ten per cent or more, the amount of the underpayment shall be based on ninety per cent of the amount of such settled or resettled tax; over

(ii) the cumulative amount of installments paid on or before the last date prescribed for payment.

(2) If the settled or resettled tax is used in calculating the amount of underpayment, the amount of tax as settled or resettled shall be utilized in determining the amount of underpayment without the necessity of the filing of any petition by the department or by the taxpayer.

(c) The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid.

(d) Notwithstanding the provisions of the preceding subsections, **[the addition to the tax]** ***interest*** with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year, including any minimum tax imposed, but otherwise on the basis of the facts shown on the report of the taxpayer for, and the law applicable to, the **[second preceding taxable year]** ***safe harbor base year***, adjusted for any changes to sections 401, 601 and 602 enacted for **[tax years beginning on or after January 1, 1991]** ***the taxable year***, if a report showing a liability for tax was filed by the taxpayer for the **[second preceding taxable year and such second preceding year was a taxable year of twelve months]** ***safe harbor base year***. If the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment does not equal or exceed the amount required to be paid per the preceding sentence, but such amount is paid after the date the installment was required to be paid, then the period of underpayment shall run from the date the installment was required to be paid to the date the amount required to be paid per the preceding sentence is paid. **[For taxpayers that have filed only one or two previous returns, if the second preceding taxable year is less than twelve months, then the first preceding taxable year shall be used; or, if there is no second preceding taxable year, then the first preceding taxable year shall be used. If the first preceding taxable year is less than twelve months, then the annualized first preceding taxable year shall be used.]** Provided, **[however,]** that if the settled tax for the **[second preceding year]** ***safe harbor base year*** exceeds the tax shown on such report by ten per cent or more, the settled tax adjusted to reflect the current tax rate shall be used for purposes of this subsection, except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any

petition by the department or by the taxpayer. In the event that the settled or resettled tax for the [**second preceding year**] ***safe harbor base year*** exceeds the tax shown on the report by ten per cent or more, [**an addition to the tax**] ***interest*** resulting from the utilization of such settled or resettled tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of such settlement or resettlement, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to such settled or resettled tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the settled or resettled tax for the [**second preceding taxable**] ***safe harbor base*** year, the tax will be reduced by multiplying it by the [**number of days in the short taxable year and dividing the resulting amount by three hundred sixty-five**] ***ratio of the number of installment payments made in the short taxable year to the number of installment payments required to be made for the full taxable year.***

[(e) (1) When the amendments to sections 401, 601 and 602 and subsection (d) result in an increase of a taxpayer's estimated taxes for 1991 and 1992 or the required safe harbor amount, the additional required installment payments of estimated tax as well as the additional amount of the required installment payments to meet the "safe harbor" shall be treated as provided by this subsection for additional estimated payments, safe harbor payments and the recomputation and preservation of the "safe harbor."

(2) (i) For purposes of computing the estimated tax "safe harbor" pursuant to subsection (d) for tax years 1991 and 1992, the second preceding taxable year (base year) shall be recomputed with the amended sections 401, 601 and 602.

(ii) Any taxpayer whose "safe harbor" is affected by this section must file a recomputation of its safe harbor year within sixty days of the effective date of this act for calendar year 1991 or taxable years beginning in 1991 and within seventy-five days of the beginning of its taxable year for calendar year 1992 or taxable years beginning in 1992. The recomputation shall be on forms as prescribed by the Department of Revenue. Any taxpayer failing to file a recomputation as required shall be denied the use of the "safe harbor" provisions of subsection (d).

(3) To the extent the amendments to sections 401, 601 and 602 and subsection (d) result in an increase in the corporation's estimated tax or the safe harbor amount, installments due after the effective date of this act shall be made pursuant to section 3003.2 and this section except:

(i) Additional amounts associated with installment payment of estimated tax due prior to the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within

sixty days of the effective date of this act or on the due date of the next installment.

(ii) Additional amounts associated with installment payment of estimated tax due within sixty days of the effective date of this act under section 3003.2 or subsection (d) shall be considered timely paid if paid within sixty days of the effective date of this act or on the due date of the next installment.]

Section 33. Section 3003.4 of the act, added July 1, 1985 (P.L.78, No.29), is amended to read:

[Section 3003.4. Interest.—(a) Interest on Underpayments of Estimated Tax. Underpayments of installments of estimated tax shall not bear interest during the period of such underpayment. However, any amount of tax finally determined to be due, which is not paid by the date the annual report is due (determined without regard to any extension of time for filing), shall bear interest from such date until paid.

(b) Interest on Additions to the Tax. Additions to the tax shall bear interest from the date the annual report is due until the date paid.]

Section 34. Section 3003.9 of the act, added June 16, 1994 (P.L.279, No.48), is amended to read:

Section 3003.9. Bad Checks*; Additions to Tax.*—**[If any check in payment of any amount receivable under Article IV, VI, VII, IX, XI or XXX is not paid upon presentment, in addition to any other penalties provided by law, the Department of Revenue shall charge the person who tendered such check a fee equal to ten percent of the face amount thereof, plus any protest fees, provided that the addition imposed hereby shall not exceed five hundred dollars ($500) nor be less than ten dollars ($10).]*(a) If any check in payment of any amount receivable under the laws of this Commonwealth administered by the department is not paid upon presentment, in addition to any interest or penalties provided by law, the department shall charge the person who tendered the check an addition to tax equal to ten per cent of the face amount of the check, plus interest and protest fees, provided that the addition imposed by this section shall not exceed five hundred dollars ($500) nor be less than twenty-five dollars ($25).***

(b) This section shall apply to all checks presented for payment after December 31, 1997.

Section 35. It is the intent of the General Assembly that the amendment of section 303(a)(3)(v) of the act is to clarify existing law. The amendment of section 303(a)(3)(v) of the act shall not be construed to change existing law.

Section 35.1. (a) The following acts and parts of acts are repealed:

Section 2506 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

Section 4 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

20 Pa.C.S. § 8618.

(b) The following acts and parts of acts are repealed insofar as they are inconsistent with this act:

Section 503(a), (b) and (c) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

Section 217(a) of the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.

Section 12 of the act of June 23, 1982 (P.L.597, No.170), known as the Wild Resource Conservation Act.

15 Pa.C.S. §§ 8925 and 8997.

(c) 75 Pa.C.S. § 9017 is repealed insofar as it relates to refunds.

Section 36. (a) The following provisions shall apply retroactively to January 1, 1997:

(1) The amendment of section 301(d.1)(1) and (2) of the act.

(2) The amendment of section 303(a)(3)(v) of the act.

(3) The amendment of section 1296 of the act.

(4) Section 35 of this act.

(b) The following provisions shall apply retroactively to taxable years beginning on or after January 1, 1997:

(1) The amendment or addition of the introductory paragraph and clauses (c.2), (d), (e.1), (o.3) and (s.2) of section 301 of the act.

(2) The amendment of section 304(d) of the act.

(3) The amendment of sections 307, 307.6, 307.8 and 307.9 of the act.

(4) The addition of Part VI-A of Article III of the act.

(5) The amendment of the definitions of "capital stock value" and "processing" in section 601 of the act.

(6) The addition of sections 602.4 and 602.5 of the act.

(c) The following provisions shall apply to taxable years beginning on or after January 1, 1998:

(1) The amendment or addition of section 301(d.1) and (n.0) of the act.

(2) The amendment of section 303(a)(3)(vi) of the act.

(3) The amendment of section 324.2 of the act.

(4) The amendment or addition of section 401(1) and (3)1(p) of the act.

(5) The amendment of the definitions of "average net income," "capital stock," "domestic entity," "foreign entity" and "net worth" in section 601 of the act.

(6) The amendment of sections 3003, 3003.2, 3003.3 and 3003.4 of the act.

(d) The following provisions shall apply to payments made on or after January 1, 1998:

(1) The amendment of section 253 of the act.

(2) The amendment of section 350 of the act.

(3) The amendment of section 1113-C of the act.

(4) The amendment of section 2009 of the act.

(5) The amendment of section 2181 of the act.

(6) The amendment of section 3003.1 and 3003.9 of the act.

(7) Section 35.1(c) of this act.

Section 37. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment or addition of the introductory paragraph and clauses (c.2), (d), (d.1)(1) and (2), (e.1), (o.3) and (s.2) of section 301 of the act.

(ii) The amendment of sections 303(a)(3)(v) and 304(d) of the act.

(iii) The amendment of sections 307, 307.6, 307.8 and 307.9 of the act.

(iv) The addition of Part VI-A of Article III of the act.

(v) The amendment of the definitions of "capital stock value" and "processing" in section 601 of the act.

(vi) The addition of sections 602.4 and 602.5 of the act.

(vii) The amendment of section 1296 of the act.

(viii) Section 35 of this act.

(ix) Section 35.1(a) of this act.

(x) Section 36 of this act.

(xi) This section.

(2) The following provisions shall take effect January 1, 1998:

(i) The amendment of section 266 of the act.

(ii) The amendment of section 303(a)(3)(vi) of the act.

(iii) The amendment of section 352 of the act.

(iv) Section 35.1(b) and (c) of this act.

(3) The remainder of this act shall take effect July 1, 1997, or immediately, whichever is later.

APPROVED—The 7th day of May, A.D. 1997.

THOMAS J. RIDGE