

No. 2001-23

AN ACT

HB 334

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for sales and use tax definitions, exclusions and refunds; providing for local sales tax situs for construction materials; revising and adding personal income tax provisions on definitions, special provisions for poverty, partnerships, associations and business entities; making an editorial change relating to the name of the Organ Donation Awareness Trust Fund; further providing for corporate net income tax definitions and resettlements; further providing for capital stock franchise definitions; further providing for administration and enforcement of the bank and trust company shares tax; eliminating the alternative bank and trust company shares tax; eliminating the alternative title insurance companies shares tax; further providing for insurance premiums tax credits for assessments; eliminating the excise tax on foreign corporations; further providing for cigarette tax enforcement and sanctions; further providing for settlement and resettlement of the mutual thrift institutions tax; providing for a tax credit for new jobs; eliminating obsolete tax credit provisions; and making repeals.

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

Section 1. Section 201(d)(8) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7), is amended and the clause is amended by adding a subclause 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:

* * *

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

* * *

(8) The operation of a saw mill or planing mill for the production of lumber or lumber products for sale. *The operation of a saw mill or planing mill begins with the unloading by the operator of the saw mill or planing mill of logs, timber, pulpwood or other forms of wood material to be used in the saw mill or planing mill.*

* * *

(16) *The production, processing and packaging of ice for wholesale distribution.*

Section 2. Section 204(44) and (58) of the act, added December 23, 1983 (P.L.370, No.90) and May 24, 2000 (P.L.106, No.23), are amended and the section is amended by adding a clause to read:

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

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(44) The sale at retail or use of firewood. For the purpose of this clause, firewood shall mean the product of trees when severed from the land and cut into proper lengths for burning and *pellets made from pure wood sawdust if* used for fuel for cooking, hot water production or to heat residential dwellings.

* * *

(58) The sale at retail or use of a personal computer [**to an individual purchaser**], *a peripheral device or an Internet access device, or a service contract or single-user licensed software purchased in conjunction with a personal computer, peripheral device or Internet access device*, during the exclusion period *by an individual purchaser* for nonbusiness use[, but not including computer leasing, rental, repair or alteration]. *The exclusion does not include a sale at retail or use of, leasing, rental or repair of a personal computer, peripheral device or Internet access device; mainframe computers; network servers; local area network hubs; routers and network cabling; network operating systems; multiple-user licensed software; minicomputers; hand-held computers; personal digital assistants without Internet access; hardware word processors; graphical calculators; video game consoles; telephones; digital cameras; pagers; compact discs encoded with music or movies; and digital versatile discs encoded with music or movies.* For purposes of this clause, the phrase “exclusion period” means the period of time from August [6, 2000] 5, 2001, to and including August [13, 2000] 12, 2001, and from February [18, 2001] 17, 2002, to and including February [25, 2001] 24, 2002. [For purposes of this clause, the phrase “personal computer” means a laptop, desktop, or tower computer system, including all computer hardware and software sold together in the same sale at retail, where the computer system includes, at a minimum, a central processing unit, random access memory, a storage drive, a display monitor and a keyboard, except that the term shall not include minicomputers, mainframe computers, network servers, local area network hubs, routers and cabling, hardware word processors, personal digital assistants, graphical calculators, hand-held computers, game consoles, Internet TV devices, network operating systems, multiple-user licensed software and hardware, separate sales at retail or use of internal or external components and separate sales of add-on components.] For purposes of this clause, “purchaser” means an individual who *places an order and* pays the purchase price [and takes delivery] *by cash or credit* during the

exclusion period [or who places an order and pays the purchase price] even if delivery takes place after the exclusion period.

* * *

(61) The sale at retail to or use of food and nonalcoholic beverages by an airline which will transfer the food or nonalcoholic beverages to passengers in connection with the rendering of the airline service.

Section 3. Section 247.1 of the act, amended or added May 12, 1999 (P.L.26, No.4) and May 24, 2000 (P.L.106, No.23), is amended to read:

Section 247.1. [Partial] Refund of Sales Tax Attributed to Bad Debt.—(a) A vendor may file a petition for refund of sales tax paid to the department that is attributed to a bad debt if all of the following apply:

(1) The purchaser fails to pay the vendor the total purchase price.

(2) The purchase price is written off, either in whole or in part, as a bad debt on the vendor's books and records.

(3) The bad debt has been deducted for Federal income tax purposes under section 166 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 166).

The petition shall be filed with the department within the time limitations prescribed by section 3003.1 of this act.

(b) The refund authorized by this section shall be limited to [two-thirds of] the sales tax paid to the department that is attributed to the bad debt, less [two-thirds of] any discount under section 227 of this act. Partial payments by the purchaser to the vendor shall be prorated between the original purchase price and the sales tax due on the sale. Payments made to a vendor on any transaction which includes both taxable and nontaxable components shall be allocated proportionally between the taxable and nontaxable components.

(c) A vendor may assign its right to petition and receive a refund of sales tax attributed to a bad debt to an affiliated entity. A vendor may not assign its right to petition and receive a refund of sales tax attributed to a bad debt to any other person.

(d) No refund shall be granted under this section for any of the following:

(i) Interest.

(ii) Finance charges.

(iii) Expenses incurred in attempting to collect any amount receivable.

(e) The documentation, procedures and methods for claiming and calculating the refund allowed under this section shall be in such form as the department may prescribe.

(f) If the purchase price that is attributed to a prior bad debt refund is thereafter collected, in whole or in part, the vendor or affiliated entity shall remit the proportional tax to the department with the first return filed after the collection.

(g) Notwithstanding the provisions of section 806.1 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," no interest shall be

paid by the Commonwealth on refunds of sales tax attributed to bad debt under this section.

(h) No refund or credit of sales tax shall be made for any uncollected purchase price or bad debt except as authorized by this section. No deduction or credit for bad debt may be taken on any return filed with the department. This section shall provide the exclusive procedure for claiming a refund or credit of sales tax attributed to uncollected purchase price or bad debt.

(i) For purposes of this section, the term "affiliated entity" shall mean any corporation that is part of the same affiliated group as the vendor as defined by section 1504(a)(1) of the Internal Revenue Code of 1986.

Section 4. The act is amended by adding a section to read:

Section 202-A. Situs for Certain Construction Materials.—(a) *Notwithstanding the provisions of section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class," the sale or use of road construction material, including recycled asphalt, recycled concrete, asphalt, concrete and road aggregates, shall be deemed to have been consummated at the location of its final destination. Final destination will be determined by reference to delivery or shipping documents relating to such sales.*

(b) *This section shall apply to taxes levied under Chapter 5 of the "Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class." This section shall not apply to taxes levied under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the "Second Class County Code."*

Section 5. Section 301(b) of the act, added August 31, 1971 (P.L.362, No.93), is amended 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. Unless specifically provided otherwise, any reference in this article to the Internal Revenue Code shall include the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended to January 1, 1997:

* * *

(b) "Association" means any form of unincorporated enterprise [other than a partnership.] which:

(1) is subject to the tax imposed under Article IV; or

(2) is required to make a return under section 6042 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6042).

The term shall not include a partnership or investment company.

* * *

Section 6. Section 304(d)(1) of the act, amended May 24, 2000 (P.L.106, No.23), 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 five hundred dollars (\$6,500) 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 thirteen thousand dollars (\$13,000) 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 [seven thousand five hundred dollars (\$7,500)] *eight thousand five hundred dollars (\$8,500)* for each 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.

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Section 7. The heading of Part IV of Article III of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

PART IV
PARTNERSHIPS [AND ASSOCIATIONS]

Section 8. Section 306 of the act, added August 31, 1971 (P.L.362, No.93), is amended to read:

Section 306. Taxability of [Members] *Partners*.—A partnership [or association] as [such] *an entity* shall not be subject to the tax imposed by this article, but the income or gain of a member of a partnership [or association] in respect of said partnership [or association] shall be subject to the tax and the tax shall be imposed on his share, whether or not distributed, of the income or gain received by the partnership [or association] for its taxable year ending within or with the [partner's or] member's taxable year.

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

PART IV-B
OTHER ENTITIES

Section 307.21. Treatment of Unincorporated Entities with Single Owners.—Unless subject to tax under Article IV, an unincorporated entity that has a single owner shall be disregarded as an entity separate from its owner.

Section 10. Sections 315.4 and 324 of the act, amended or added May 7, 1997 (P.L.85, No.7), are amended to read:

Section 315.4. Contributions for Organ *and Tissue* 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 *Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund* established under 20 Pa.C.S. § 8622 (relating to *the Governor Robert P. Casey Memorial Organ and Tissue 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 *Governor Robert P. Casey Memorial Organ and Tissue 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 *Governor Robert P. Casey Memorial Organ and Tissue 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 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**] *the* income is allocable to a nonresident partner, member or shareholder thereof, [**such**] *the* partnership[, **association**] or Pennsylvania S corporation shall pay a withholding tax under this section at [**such**] *the* time and in [**such**] *the* manner [**as**] *prescribed by* 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 401(1) and (3)2(a)(1)(A) and (D) of the act, amended May 12, 1999 (P.L.26, No.4), are amended 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." *Any of the following:*

(i) A corporation[.].

(ii) A joint-stock association[, or a].

(iii) A business trust [or a], limited liability company[, that] or other entity which for Federal income tax purposes is classified as a corporation[, and (i) is doing business in this Commonwealth; or (ii) is carrying on activities in this Commonwealth; (iii) has capital or property employed or used in this Commonwealth; or (iv) 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] an entity subject to taxation under Article VII, VIII, IX or XV. The word shall not include:

1. [Any domestic or foreign] A business trust [that] which qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or which is a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or [any] a 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] which owns all of the stock of the qualified real estate investment trust subsidiary.

2. [Any domestic or foreign] A business trust [that] which qualifies as a regulated investment company under section 851 of the Internal Revenue Code and which is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or [any] a 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] A corporation, trust or other entity [that] which 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] A corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state [that] which:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501);

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c)); or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

(3) "Taxable income." ***

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1954, as amended, is not transacted within this Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

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

(A) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if *either* the acquisition, *the management*[, and] *or the* disposition of the property [constitute integral parts] *constitutes an integral part* of the taxpayer's regular trade or business operations. *The term includes all income which is apportionable under the Constitution of the United States.*

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

Section 12. Section 407(e) of the act is repealed.

Section 13. The definitions of "corporation," "domestic entity," "foreign entity" and "processing" in section 601(a) of the act, amended or added April 23, 1998 (P.L.239, No.45), May 12, 1999 (P.L.26, No.4) and May 24, 2000 (P.L.106, No.23), 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:

"Corporation." Includes the following entities:

- (1) A corporation.
- (2) A joint-stock association.
- (3) A business trust.
- (4) A limited liability company other than a restricted professional company subject to 15 Pa.C.S. Ch. 89 Subch. L (relating to restricted professional companies) that is deemed to be a limited partnership pursuant to 15 Pa.C.S. § 8997 (relating to taxation of restricted professional companies).

(5) *An entity which for Federal income tax purposes is classified as a corporation.*

“Domestic entity.” Every corporation organized or incorporated by or under any laws of the Commonwealth, other than corporations of the first class and cooperative agricultural associations not having capital stock and not conducted for profit, [banks, savings institutions, title insurance and trust companies, building and loan associations and insurance companies] or an entity subject to taxation under Article VII, VIII, IX or XV is a domestic entity. The term “domestic entity” shall not include:

(1) [Any domestic or foreign] A business trust [that] *which* qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or *which is* a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or [any] a 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] *which* owns all of the stock of the qualified real estate investment trust subsidiary.

(2) [Any domestic or foreign] A business trust [that] *which* qualifies as a regulated investment company under section 851 of the Internal Revenue Code and *which* is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or [any] a 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] A corporation, trust or other entity [that] *which* 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] A corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state [that] *which*:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986;

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 528(c)); or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 (26 U.S.C. § 277) but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

(5) A domestic business trust provided:

(i) the trust is created or managed by an entity subject to the tax imposed by Article VII[, VII-A] or XV or by an affiliate of [that] *the* entity [that] *which* shares at least eighty per cent common ownership;

(ii) the trust is created and managed for the purpose of facilitating the securitization of intangible assets; and

(iii) the trust is classified as a partnership or a disregarded entity for Federal income tax purposes.

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“Foreign entity.” Every corporation 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 **[banks, savings institutions, title insurance or trust companies, building and loan associations and insurance companies]** *an entity subject to tax under Article VII, VIII, IX or XV* is a foreign entity. The term “foreign entity” shall not include:

(1) **[Any domestic or foreign]** A business trust **[that]** *which* qualifies as a real estate investment trust under section 856 of the Internal Revenue Code or *which is* a qualified real estate investment trust subsidiary under section 856(i) of the Internal Revenue Code or **[any]** a 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]** *which* owns all of the stock of the qualified real estate investment trust subsidiary.

(2) **[Any domestic or foreign]** A business trust **[that]** *which* qualifies as a regulated investment company under section 851 of the Internal Revenue Code and *which* is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 or **[any]** a 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]** A corporation, trust or other entity **[that]** *which* is an exempt organization as defined by section 501 of the Internal Revenue Code of 1986.

(4) **[Any]** A corporation, trust or other entity organized as a not-for-profit under the laws of this Commonwealth or the laws of any other state **[that]** *which*:

(i) would qualify as an exempt organization as defined by section 501 of the Internal Revenue Code of 1986;

(ii) would qualify as a homeowners association as defined by section 528(c) of the Internal Revenue Code of 1986; or

(iii) is a membership organization subject to the Federal limitations on deductions from taxable income under section 277 of the Internal Revenue Code of 1986 but only if no pecuniary gain or profit inures to any member or related entity from the membership organization.

(5) A foreign business trust provided:

(i) the trust is created or managed by an entity subject to the tax imposed by Article VII[, VII-A] or XV or by an affiliate of [that] *the* entity [that] *which* shares at least eighty per cent common ownership;

(ii) the trust is created and managed for the purpose of facilitating the securitization of intangible assets; and

(iii) the trust is classified as a partnership or a disregarded entity for Federal income tax purposes.

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“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 fruits or vegetables by cleaning, cutting, coring, peeling or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the fruits or 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] *saw mill* or planing mill for the production of lumber or lumber products for sale. *The operation of a saw mill or planing mill begins with the unloading by the operator of the saw mill or planing mill of logs, timber, pulpwood or other forms of wood material to be used in the saw mill or planing mill.*

(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.

(16) The cleaning and roasting and the blending, grinding or packaging for sale of coffee from green coffee beans or the production of coffee extract.

(17) The refining, blasting, exploring, mining and quarrying for or otherwise extracting limestone, sand, gravel or slag from the earth or from waste or stock piles or from pits or banks and the cleaning, crushing, grinding, pulverizing, sizing or screening of limestone, sand, gravel or slag, including blast furnace slag.

(18) The preparation of dry or liquid fertilizer for sale.

(19) The production, processing and packaging of ice for wholesale distribution.

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Section 14. Section 702 of the act is amended to read:

Section 702. Procedure; Enforcement; Penalties.—(a) *Except as set forth in subsection (b),* Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article in so far as they are applicable to the tax imposed hereunder.

(b) The Department of Revenue may, upon application made by the last day for filing and in a form prescribed by the department, grant an extension of not more than six months for filing the annual report required by section 701.

Section 14.1. Articles VII-A and VIII-A of the act are repealed.

Section 15. Section 901 of the act is amended by adding a clause to read:

Section 901. Definitions.—The following terms, when used in this act, shall have the meaning ascribed to them in this section:

* * *

(7) ***“Assessment base” means the amount of net direct written premiums used by the guaranty association to calculate a member insurer’s assessment on an account under section 1808 of the act of May 17, 1921 (P.L.682, No.284), known as “The Insurance Company Law of 1921.”***

Section 16. Section 902.1 of the act, added May 24, 2000 (P.L.106, No.23), is amended to read:

Section 902.1. Credits for Assessments Paid.—(a) A member insurer that has paid assessments to the guaranty association shall be entitled to a credit as authorized by this section. The credit shall be equal to the amount by which the assessment paid to the guaranty association exceeds one per cent of the member insurer’s [**“net direct written premiums,” as defined in section 1802 of the act of May 17, 1921 (P.L.682, No.284), known as “The Insurance Company Law of 1921,” as calculated for the preceding calendar year**] ***assessment base***. Except as provided in subsection (e), the credit authorized by this section shall be applied against the taxes due under this article in equal portions for each of the five calendar years following payment of the assessment. In the event a member insurer should cease doing business, all unused credits may be applied against its premium tax liability for the year it ceases doing business. A member insurer is not entitled to a refund of any unused credit.

(b) Any sums which are acquired by a member insurer from the guaranty association either by refund or by receipt of an offset which may be used against an assessment and which have been used in calculating a credit under subsection (a) shall reduce the amount of unused credits or shall be paid by such insurer to the Commonwealth, as the Department of Revenue may require. The guaranty association shall notify the department and the Insurance Commissioner that such sums have been acquired by the member insurer.

(c) No credit against premium tax liability shall be permitted to the extent that a member insurer’s rates and premiums have been adjusted as permitted in section 1810 of ***the act of May 17, 1921 (P.L.682, No.284), known as “The Insurance Company Law of 1921.”***

(d) The credits allowed by this section shall not reduce the amounts which would otherwise be payable for firemen’s relief pension or retirement purposes or for police pension, retirement or disability purposes. The department shall transfer by June 30 of each fiscal year an amount equal to the credits taken under this section by foreign fire and casualty insurance companies from the General Fund to the Municipal Pension Aid Fund and the Fire Insurance Tax Fund, as appropriate.

(e) Credits taken by an insurer under this section shall not be included in determining liability for retaliatory taxes imposed under section 212 of the act of May 17, 1921 (P.L.789, No.285), known as "The Insurance Department Act of 1921."

Section 17. Article X of the act is repealed.

Section 18. Sections 1215 and 1276 of the act, added December 21, 1981 (P.L.482, No.141), are amended to read:

Section 1215. Stamp to Evidence the Tax.—(a) The department shall by regulation require every cigarette stamping agency or ultimate consumer, to use cigarette tax stamps to evidence the payment of the tax imposed by this article unless such stamps have been affixed to the packs of cigarettes and properly cancelled before such cigarette stamping agency or ultimate consumer received them.

(b) The department shall by regulation authorize the sale of cigarette tax stamps at such places and at such times as it deems necessary and the department shall prescribe the manner, time and conditions under which the payment of tax shall be made.

(c) The department shall also prescribe the type of cigarette tax stamps which shall be used, to evidence payment of the tax. Nothing in this provision shall be construed as a limitation upon the department to prescribe various methods of affixing cigarette tax stamps and said department shall have the authority to prescribe one or more of several types of tax stamps which shall be used by a particular cigarette stamping agency whenever, in the reasonable exercise of its powers, it shall be deemed necessary for the protection of the revenue.

(d) Under no circumstances shall any cigarette stamping agency be permitted to sell, transfer or deliver to any person any packages of unstamped cigarettes, or any unused cigarette tax stamps unless specifically permitted by the provisions of this article.

(e) The department shall by regulation permit a cigarette stamping agency to pay for purchases on a deferred basis, upon the filing of a surety bond, of the type approved by the department, with the department, in an amount deemed sufficient by the department to protect the revenue, said bond to be executed by the cigarette stamping agency as principal and by a corporate surety company, duly authorized to engage in such business in the Commonwealth of Pennsylvania, as surety. The department shall deny deferred purchase plans to any stamping agency in any state where such state denies stamping agencies in Pennsylvania the right to use deferred purchase plans. *The department may deny any cigarette stamping agent the right to purchase cigarette tax stamps if the cigarette stamping agent is delinquent in remitting cigarette taxes or fines owed the Commonwealth.*

Section 1276. Failure to Furnish Information, Returning False Information or Failure to Permit an Inspection.—(a) Any dealer who fails to keep or make any record, return, report, inventory or statement, or keeps

or makes any false or fraudulent record, return, report, inventory or statement required by this article[, or section 214-A, 215-A or 216-A of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year, or both, in the discretion of the court. *Notwithstanding any fine imposed by a court of competent jurisdiction in accordance with this subsection or by the department under section 229-A(c) of "The Fiscal Code," if the dealer is a cigarette stamping agent, the department may impose an administrative fine of not more than five thousand dollars (\$5,000) and, upon notice, may suspend the right of the cigarette stamping agent to purchase cigarette tax stamps for six months. If a cigarette stamping agent's right to purchase cigarette tax stamps is suspended pursuant to this subsection more than twice, after a hearing, the department shall revoke the license of the cigarette stamping agent; and, for a period of two years, the department shall reject any application by the stamping agent for a license under section 204-A of "The Fiscal Code."*

(b) The department is hereby authorized to examine the books and records, the stock of cigarettes and the premises and equipment of any dealer in order to verify the accuracy of the payment of the tax imposed by this article. Every such person is hereby directed and required to give to the department or its duly authorized representative, the means, facilities and opportunity for such examinations. Wilful refusal to cooperate with or permit such examination to the satisfaction of the department shall be sufficient grounds for the suspension or revocation of any license issued hereunder, and in addition thereto shall constitute a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year or both.

Section 19. Sections 1278(c) and 1285(e), (f) and (k) of the act, amended or added December 21, 1981 (P.L.482, No.141) and August 4, 1991 (P.L.97, No.22), are amended to read:

Section 1278. Other Violations.—* * *

(c) Any person who fails to pay tax at the time prescribed shall, in addition to any other penalty provided in this article, be liable to a penalty of five per cent of the tax due but unpaid for each month or fraction thereof the tax remains unpaid together with the interest at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," on such tax from the time the tax became due[, but no interest for a fraction of a month shall be demanded]. The penalties provided in this subsection shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.

Section 1285. Property Rights.—* * *

(e) The department shall dispose of cigarettes forfeited under the provisions of this article by the sale [of same through the Division of Escheats, Bureau of County Collections,] or destruction of cigarettes pursuant to regulations promulgated by the Secretary of Revenue.

(f) The proceedings for the forfeiture of any cigarette vending machine or motor vehicle, in which are found unstamped cigarettes shall be in rem. The Commonwealth shall be the plaintiff and the property shall be the defendant. A petition shall be filed within [five] *ten* days after confiscation in the court of common pleas of the county in which the property or vehicle was taken by agents of the department, the police or other such authorized peace officer, verified by oath or affirmation of any cigarette tax enforcement officer, police officer or other person. In the event that such petition is not filed within the time prescribed herein, such confiscated vending machine or motor vehicle shall be immediately returned to the person from whom confiscated or the owner thereof.

* * *

(k) Upon the filing of any claim for the property setting forth a right of possession thereof, the case shall be deemed at issue and a hearing shall be held within [five] *ten* days thereof.

* * *

Section 20. Section 1503 of the act, added December 1, 1983 (P.L.228, No.66), is amended to read:

Section 1503. [Settlement and Resettlement of Tax.—The settlement and resettlement of taxes imposed by this article, including the granting of extensions of time to file reports and the rights of the taxpayer to present and prosecute a petition for resettlement, a petition for review, or an appeal to court, or to file a petition for refund, and the imposition of interest and penalties, shall be governed by the provisions of the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code,” relevant to capital stock and franchise taxes.] Procedure; Enforcement; Penalties.—(a) Except as set forth in subsection (b), Parts III, IV, V, VI and VII of Article IV are incorporated by reference into this article insofar as they are applicable to the tax imposed under this article.

(b) The Department of Revenue may, upon application made by the last day for filing and in a form prescribed by the department, grant an extension of not more than six months for filing the annual report required by section 1502.

Section 21. Articles XVII and XVIII of the act are repealed.

Section 22. The act is amended by adding an article to read:

**ARTICLE XVIII-B
TAX CREDIT FOR NEW JOBS**

Section 1801-B. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Base period.” *The three years preceding the date on which a company may begin creating new jobs which may be eligible for job creation tax credits.*

“Department.” *The Department of Community and Economic Development of the Commonwealth.*

“Job creation tax credits.” *Tax credits for which the department has issued a certificate under this article.*

“New job.” *A full-time job, the average hourly rate, excluding benefits, for which must be at least 150% of the Federal minimum wage, created within a municipality located in this Commonwealth by a company within three years from the start date.*

“Start date.” *The date on which a company may begin creating new jobs which may be eligible for job creation tax credits.*

“Year one.” *A one-year period immediately following the start date.*

“Year three.” *A one-year period immediately following the end of year two.*

“Year two.” *A one-year period immediately following the end of year one.*

Section 1802-B. Eligibility.

In order to be eligible to receive job creation tax credits, a company must demonstrate to the department the following:

(1) *The ability to create the number of jobs required by the department within three years from the start date.*

(2) *Leadership in the application, development or deployment of leading technologies.*

(3) *Financial stability and the project's financial viability.*

(4) *The intent to maintain operations in this Commonwealth for a period of five years from the date the company submits its tax credit certificate to the Department of Revenue.*

(5) *An affirmation that the decision to expand or locate in this Commonwealth was due in large part to the availability of a job creation tax credit.*

Section 1803-B. Application process.

(a) **Application.**—*A company must complete and submit to the department a job creation tax credit application.*

(b) **Creation of jobs.**—*The applicant must agree to create at least 25 new jobs or to increase the applicant's number of employees by at least 20% within three years of the start date.*

(c) **Approval.**—*If the department approves the company's application, the department and the company shall execute a commitment letter containing the following:*

(1) *A description of the project.*

- (2) *The number of new jobs to be created.*
- (3) *The amount of private capital investment in the project.*
- (4) *The maximum job creation tax credit amount the company may claim.*
- (5) *A signed statement that the company intends to maintain its operation in this Commonwealth for five years from the start date.*
- (6) *Such other information as the department deems appropriate.*
- (d) *Commitment letter.*—After a commitment letter has been signed by both the Commonwealth and the company, the company shall receive a job creation tax credit certificate and filing information.

Section 1804-B. Tax credits.

(a) *Maximum amount.*—A company may claim a tax credit of \$1,000 per new job created up to the maximum job creation tax credit amount specified in the commitment letter.

(b) *Determination of new jobs created.*—

(1) *New jobs shall be deemed created in year one to the extent that the company's average employment by quarter during year one exceeds the company's average employment level during the company's base period.*

(2) *New jobs shall be deemed created in year two to the extent that the company's average employment by quarter during year two exceeds the company's average employment by quarter during year one.*

(3) *New jobs shall be deemed created in year three to the extent that the company's average employment by quarter during year three exceeds the company's average employment by quarter during year two.*

(c) *Applicable taxes.*—A company may apply the tax credit to 100% of the company's State corporate net income tax, capital stock and franchise tax or the capital stock and franchise tax of a shareholder of the company if the company is a Pennsylvania S corporation, gross premiums tax, gross receipts tax, bank and trust company shares tax, mutual thrift institution tax, title insurance company shares tax, personal income tax or the personal income tax of shareholders of a Pennsylvania S corporation or any combination thereof.

(d) *Tax credit term.*—A company may claim the job creation tax credit for each new job created, as approved by the department, for a period determined by the department but not to exceed five years from the date the company first submits a job creation tax credit certificate.

(e) *Availability of tax credits.*—Each fiscal year, \$22,500,000 in tax credits shall be made available to the department and may be awarded by the department in accordance with this article. In addition, in any fiscal year, the department may reissue or assign prior fiscal year tax credits which have been recaptured under section 1806-B(a) or (b) and may award prior fiscal year credits not previously issued. Prior fiscal year

credits may be reissued, assigned or awarded by the department without limitation by section 1805-B(b).

Section 1805-B. Prohibitions.

(a) Prohibitions.—The following actions with regard to job creation tax credits are prohibited:

(1) Approval of jobs that have been created prior to the start date.

(2) Approval for a company which is relocating operations from one municipality in this Commonwealth to another unless special circumstances exist and the municipality that is losing the existing jobs has an opportunity to submit comments prior to action by the department. If the department approves the tax credits, the company must commit to preserving the existing employees, and the credit shall apply only to the new jobs.

(3) The assignment, transfer or use of credits by any other company, provided, however, that tax credits may be assigned in whole or in part to an affiliated entity. As used in this paragraph, the term “affiliated entity” means an entity which is part of the same “affiliated group,” as defined by section 1504(a)(1) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504(a)(1)), as the company awarded the credit.

(b) Allocations.—Twenty-five percent of the total amount of all tax credits authorized in any fiscal year under section 1804-B(e) shall be available to companies with fewer than 100 employees. Any portion of this allocation not committed by April 30 of each year shall be available to any business which meets the remaining program criteria.

Section 1806-B. Penalties.

(a) Failure to maintain operations.—A company which receives job creation tax credits and fails to substantially maintain existing operations and the operations related to the job creation tax credits in this Commonwealth for a period of five years from the date the company first submits a job creation tax credit certificate to the Department of Revenue shall be required to refund to the Commonwealth the total amount of credit or credits granted.

(b) Failure to create jobs.—A company which receives job creation tax credits and fails to create the approved number of new jobs within three years of the start date will be required to refund to the Commonwealth the total amount of credit or credits granted.

(c) Waiver.—The department may waive the penalties outlined in subsections (a) and (b) if it is determined that a company’s operations were not maintained or the new jobs were not created because of circumstances beyond the company’s control. Such circumstances include natural disasters, unforeseen industry trends or a loss of a major supplier or market.

Section 23. Article XIX of the act is repealed.

Section 24. The following acts and parts of acts are repealed to the extent specified:

Section 504 of the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class, insofar as it is inconsistent with the addition of section 202-A of the act.

Chapter 9 of the act of June 29, 1996 (P.L.434, No.67), known as the Job Enhancement Act, absolutely.

Section 25. The General Assembly finds and declares that the intent of the amendment of section 401(3)2(a)(1)(A) and (D) of the act is to clarify existing law.

Section 26. This act shall apply as follows:

(1) The following provisions shall apply to assessments paid after December 31, 1998:

(i) The addition of section 901(7) of the act.

(ii) The amendment of section 902.1 of the act.

(2) The amendment of section 401(3)2(a)(1)(A) and (D) of the act shall apply to taxable years beginning after December 31, 1998.

(3) The following provisions shall apply to taxes paid for calendar year 2000 and thereafter:

(i) The addition of section 901(7) of the act.

(ii) The amendment of section 902.1 of the act.

(4) The following provisions shall apply to taxable years beginning after December 31, 2000:

(i) The amendment of section 301(b) of the act.

(ii) The amendment of section 304(d)(1) of the act.

(iii) The amendment of the heading of Part IV of Article III of the act.

(iv) The amendment of section 306 of the act.

(v) The addition of Part IV-B of Article III of the act.

(vi) The amendment of section 324 of the act.

(vii) The amendment of section 401(1) of the act.

(viii) The repeal of section 407(e) of the act.

(ix) The amendment of the definitions of "corporation," "domestic entity," "foreign entity" and "processing" in section 601(a) of the act.

(x) The amendment of section 702 of the act.

(xi) The amendment of section 1503 of the act.

(5) The amendment of section 247.1 of the act shall apply to amounts deducted as bad debts on Federal income tax returns required to be filed after January 1, 2001.

Section 27. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment of section 401(3)2(a)(1)(A) and (D) of the act.

(ii) Section 25 of this act.

(iii) Section 26 of this act.

- (iv) This section.
- (2) The following provisions shall take effect January 1, 2002:
 - (i) The amendment of section 1215 of the act.
 - (ii) The amendment of section 1276 of the act.
 - (iii) The amendment of section 1278(c) of the act.
 - (iv) The amendment of section 1285(e), (f) and (k) of the act.
- (3) The remainder of this act shall take effect July 1, 2001, or immediately, whichever is later.

APPROVED—The 22nd day of June, A.D. 2001.

THOMAS J. RIDGE