

No. 2007-55

AN ACT

SB 97

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," in sales and use tax, further providing for definitions, for exclusions, for assessment and for refund; in personal income tax, further providing for operational provisions and for assessment; in corporate net income tax, further providing for assessments; in bank and trust company shares tax, further providing for ascertainment of taxable amount and exclusion of United States obligations; in realty transfer tax, further providing for assessment and notice; providing for a film production tax credit, conferring powers and duties upon the Department of Community and Economic Development and providing for a resource enhancement and protection tax credit; in neighborhood assistance tax credit, further providing for definitions, for tax credit and for grant of tax credit and providing for pass-through entities; in malt beverage tax, further providing for departmental assessment; and providing for powder metallurgy parts.

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

Section 1. The definition of "manufacture" in section 201(c) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 12, 2006 (P.L.1137, No.116), is 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. For purposes of this clause, "operation" shall include clean rooms and their component systems, including: environmental control systems, antistatic vertical walls and manufacturing platforms and floors, which are independent of the real estate; process piping systems; specialized lighting systems; deionized water

systems; process vacuum and compressed air systems; process and specialty gases; and alarm or warning devices specifically designed to warn of threats to the integrity of the product or people. For purposes of this clause, a "clean room" is a location with a self-contained, sealed environment with a controlled, closed air system independent from the facility's general environmental control system.

(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.

(8) Remanufacture by a remanufacturer of locomotive 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.

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

* * *

Section 1.1. Section 204(54) of the act, added May 7, 1997 (P.L.85, No.7), is amended to read:

Section 204. Exclusions from Tax.—The tax imposed by section 202 shall not be imposed upon any of the following:

* * *

[(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 1.2. Section 230 of the act, amended October 18, 2006 (P.L.1149, No.119), is amended to read:

Section 230. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of the tax (including interest, additions and penalties) imposed by this article. A notice of assessment and demand for payment shall be mailed [by certified mail] to the taxpayer. The notice shall set forth the basis of the assessment.

(b) The notice required by subsection (a) shall be mailed by certified mail if the assessment is for \$300 or more.

Section 2. Section 247.1 of the act, amended June 22, 2001 (P.L.353, No.23) and October 18, 2006 (P.L.1149, No.119), is amended to read:

Section 247.1. 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 *of the vendor or an affiliate of the vendor.*

(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 under Article XXVII within the time limitations prescribed by section 3003.1 of this act.]

(a.1) A petition for refund, which is authorized by this section, must be filed with the department within the time limitations prescribed by section 3003.1(a).

(a.2) In the case of private-label credit card accounts not qualifying under subsection (a), a vendor or lender that makes an election pursuant to subsection (a.3) shall be entitled to file a petition for refund of sales tax that the vendor has previously reported and paid to the department if all of the following conditions are met:

(1) No refund was previously allowed with respect to the portion of the account written off as a bad debt.

(2) The account has been found worthless and written off, either in whole or in part, as bad debt on the books and records of the lender or an affiliate of the lender.

(3) The account 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) by the lender or an affiliate of the lender.

(a.3) In order to be eligible for a refund under subsection (a.2), the lender and the vendor must execute and file with the department a joint election, signed by both parties, designating which party is entitled to claim the refund. This election may not be revoked unless a written notice is signed by the party that signed the election being revoked and is filed with the department.

(b) The refund authorized by this section shall be limited to the sales tax paid to the department that is attributed to the bad debt, less 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 *or a lender* 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.] affiliate.**

(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.] *Documentation requirements are as follows:*

(1) Any person claiming a refund under this section shall, on request, make available adequate books, records or other documentation supporting the claimed refund, including:

(i) Date of original sale and name and Pennsylvania sales tax license number of the retailer.

(ii) Name and address of purchaser.

(iii) Amount that the purchaser paid or agreed to pay.

(iv) Taxable and nontaxable charges.

(v) Amount on which the retailer reported and paid sales tax.

(vi) All payments or other credits applied to the account of the purchaser.

(vii) Evidence that the uncollected amount has been designated as a bad debt in the books and records of the vendor or lender, as appropriate, and that the amount has been claimed as a bad debt deduction for Federal income tax purposes.

(viii) The county in which any local sales tax was incurred.

(ix) The unpaid portion of the sales price.

(x) A certification, under penalty of perjury, that no person has collected money on the bad debt for which the refund is claimed.

(xi) Any other information required by the department.

(2) A person claiming a refund under this section may provide alternative forms of documentation acceptable to the department if appropriate in light of the volume and character of uncollectible accounts. This includes the following:

(i) If a vendor remits sales or use tax to the Commonwealth and to another state, the entity claiming a refund under this section may use an apportionment method to substantiate the amount of Pennsylvania tax included in the bad debts to which the refund applies.

(ii) The apportionment method must use the vendor's Pennsylvania and non-Pennsylvania sales, the vendor's taxable and nontaxable sales and the amount of tax the vendor remitted to Pennsylvania.

(f) The following apply:

(1) If the purchase price that is attributed to a prior bad debt refund is thereafter collected, in whole or in part[,] by the vendor or [affiliated] lender, or an affiliate of the vendor or lender, the entity claiming the refund shall remit the proportional tax to the department with the first return filed after the collection. If the entity is not required to file periodic returns, the entity shall remit the proportional tax to the department with another return pursuant to section 217(c).

(2) Any consideration received for the assignment, sale or other transfer of a bad debt with respect to which a refund has been granted shall be deemed to be a collection of a prior bad debt. This paragraph shall not apply to a transfer to an entity that is part of the same affiliated group,

as defined by section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).

(3) A person that collects, in whole or in part, the purchase price attributed to a prior bad debt refund is required to maintain adequate books, records or other documentation to allow the department to determine whether the purchase price attributed to a prior bad debt refund has been collected. Information under this paragraph includes the pertinent facts required by subsection (e).

(4) If it is determined by the department that a prior bad debt has been collected, in whole or in part, and the proportional tax has not been properly reported and paid to the department, the person that claimed the refund on the transaction shall report and pay the proportional tax to the department plus applicable interest and penalty under this article.

(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] As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Affiliate." A person that is:

(i) an affiliated entity, under section 1504[(a)(1)] of the Internal Revenue Code of 1986[.], of a vendor; or

(ii) a person described in paragraph (2)(i) or (ii) that would be an affiliated entity, under section 1504 of the Internal Revenue Code of 1986, of a vendor but for the fact the person is not a corporation, an assignee or another transferee of a person described in paragraph (2)(i) or (ii).

(2) "Lender." Any of the following:

(i) A person that owns or has owned a private-label credit card account purchased directly from a vendor that reported the tax under this article.

(ii) A person that owns or has owned a private-label credit card account pursuant to a contract directly with the vendor that reported the tax under this article.

(iii) A person that is:

(A) an affiliate of a person described in subparagraph (i) or (ii); or

(B) an assignee or other transferee of a person described in subparagraph (i) or (ii).

(3) "Private-label credit card." Any charge card, credit card or other instrument serving similar purpose which carries, refers to or is branded

with the name or logo of a vendor and which can be used for purchases from the vendor. The term does not include a card or instrument which may also be used to make purchases from persons other than the vendor whose name or logo appears on the card or instrument or that vendor's affiliates. Nothing in this paragraph authorizes a refund with respect to bad debts attributable to sales by unrelated persons referred to in this paragraph.

Section 3. Section 315.9 of the act, added July 7, 2005 (P.L.149, No.40), is amended to read:

Section 315.9. Operational Provisions.—(a) Except for the checkoff established under sections 315.2, 315.6 and 315.7 and except as otherwise provided under subsection (b), the checkoffs established under this part shall apply through taxable years ending December 31, 2007.

(b) Any checkoff established under this part and applicable for the first time in a taxable year beginning after December 31, 2003, shall expire four years after the beginning of such first taxable year.

(c) Sections [315.2,] 315.3 and 315.4 shall expire January 1, [2008] 2010.

Section 4. Sections 338 and 407.1 of the act, amended or added October 18, 2006 (P.L.1149, No.119), are amended to read:

Section 338. Assessment.—(a) The department is authorized and required to make the inquiries, determinations and assessments of all taxes imposed by this article.

(b) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(c) In the event that any taxpayer fails to file a return required by this article, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within ninety days after a notice of such estimated assessment has been mailed to the taxpayer, unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by Article XXVII.

(d) A notice of assessment issued by the department pursuant to this article shall be mailed [by certified mail] to the taxpayer. The notice shall set forth the basis of the assessment.

(e) The notice required by subsection (d) shall be mailed by certified mail if the assessment is for \$300 or more.

Section 407.1. Assessments.—(a) If the department determines that unpaid or unreported tax is due the Commonwealth, the department shall issue an assessment under this section and sections 407.2, 407.3, 407.4 and 407.5. Such an assessment is not subject to the settlement procedure in the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(b) A notice of assessment and demand for payment shall be mailed [by certified mail] to the taxpayer. The notice shall set forth the basis of the

assessment. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the assessment shall be without prejudice to the right of the taxpayer to file a petition for reassessment in the manner prescribed by Article XXVII.

(c) In the event that a taxpayer fails to file a report for a tax governed by this article, the department may issue an estimated assessment based upon the records and information available or that may come into the department's possession. If prior to the filing of a report the department estimates that additional unpaid or unreported tax is due the Commonwealth, the department may issue additional estimated assessments.

(d) A notice of estimated assessment and demand for payment shall be mailed **[by certified mail]** to the taxpayer. The assessment shall be paid to the department upon receipt of the notice of assessment. Payment of the estimated assessment does not eliminate the taxpayer's obligation to file a report.

(e) A taxpayer shall have no right to petition for reassessment, petition for refund or otherwise appeal a notice of estimated assessment except as provided in subsection (f).

(f) The department shall remove an estimated assessment within ninety days of the filing of a report and other information required to determine the tax due the Commonwealth, whereupon the department may issue an assessment as provided in subsection (a). Any tax due the Commonwealth that is included in an estimated assessment shall retain its lien priority as of the date of the estimated assessment to the extent such amount is included with an assessment issued upon the review of the filed report.

(g) The notice required by subsections (b) and (d) shall be mailed by certified mail if the assessment is for \$300 or more.

Section 5. Section 701.1 of the act, amended June 16, 1994 (P.L.279, No.48), is amended to read:

Section 701.1. Ascertainment of Taxable Amount; Exclusion of United States Obligations.—(a) The taxable amount of shares shall be ascertained and fixed by adding together the value determined under subsection (b) for the current and preceding five years and dividing the resulting sum by six. If an institution has not been in existence for a period of six years, the taxable amount of shares shall be ascertained and fixed by adding together the values determined under subsection (b) for the number of years the institution has been in existence and dividing the resulting sum by such number of years.

(b) The value for each year required by subsection (a) shall be determined by **[adding together] deducting from** the book value of **[capital stock paid in, the book value of the surplus and the book value of undivided profits with a deduction from the total thereof of] total equity capital** an amount equal to the same percentage of **[such total] total equity capital** as the book value of obligations of the United States bears to the book value of the total assets[.], ***except that, for the value of shares reported on tax returns due on March 15, 2008, and thereafter, any goodwill recorded***

as a result of the use of purchase accounting for an acquisition or combination as described in this section and occurring after June 30, 2001, may be subtracted from the book value of total equity capital and disregarded in determining the deduction provided for obligations of the United States for the six-year period described in subsection (a). For purposes of this subsection, book values and deductions for United States obligations for each year shall be determined by the Reports of Condition for each calendar quarter of the preceding calendar year in accordance with the requirements of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation or other applicable regulatory authority; and book values shall be averaged as calculated by averaging book values as determined by such Reports of Condition. For purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124. For any year in which an institution does not file four quarterly Reports of Condition, book values and deductions for United States obligations shall be determined by adding together the book values and deductions for United States obligations from each quarterly Reports of Condition filed for such year and dividing the resulting sums by the number of such Reports of Condition. In the case of institutions which do not file such Reports of Condition, book values shall be determined by generally accepted accounting principles as of the end of each calendar quarter. For any year in which an institution which does not file Reports of Condition is not in existence for four quarters, the book value for that year shall be determined by adding together the book values for each quarter in which the institution was in existence and dividing by that number of quarters. For purposes of this section, a partial year shall be treated as a full year.

(c) For purposes of this section:

(1) a mere change in identity, form or place of organization of one institution, however effected, shall be treated as if a single institution had been in existence prior to as well as after such change; and

(2) the combination of two or more institutions into one shall be treated as if the constituent institutions had been a single institution in existence prior to as well as after the combination and the book values and deductions for United States obligations from the Reports of Condition of the constituent institutions shall be combined. For purposes of **[the preceding sentence]** *this section*, a combination shall include any acquisition required to be accounted for **[by the surviving institution under the pooling of interest method]** *by using the purchase method* in accordance with generally accepted accounting principles or a statutory merger or consolidation.

Section 6. Section 1111-C of the act, amended October 18, 2006 (P.L.1149, No.119), is amended to read:

Section 1111-C. Assessment and Notice of Tax; Review.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment

of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such assessments shall be made within three years after the date of the recording of the document, subject to the following:

(1) If the taxpayer underpays the correct amount of the tax by twenty-five per cent or more, the tax may be assessed at any time within six years after the date of the recording of the document.

(2) If any part of an underpayment of tax is due to fraud or an undisclosed, intentional disregard of rules and regulations, the full amount of the tax may be assessed at any time.

(b) Promptly after the date of such assessment, the department shall send [by certified mail] a copy thereof, including the basis of the assessment, to the person against whom it was made. Any taxpayer against whom an assessment is made may petition the department for a reassessment pursuant to Article XXVII.

(d) The notice required by subsection (b) shall be sent by certified mail if the assessment is for \$300 or more.

Section 7. The act is amended by adding articles to read:

**ARTICLE XVII-D
FILM PRODUCTION TAX CREDIT**

Section 1701-D. Scope of article.

This article relates to film production tax credits.

Section 1702-D. 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:

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

“Film.” A feature film, a television film, a television talk or game show series, a television commercial or a television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring news, current events, weather and market reports, public programming, sports events, awards shows or other gala events, a production that solicits funds, a production containing obscene material or performances as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other sexual materials and performances) or a production primarily for private, political, industrial, corporate or institutional purposes.

“Pass-through entity.” A partnership as defined in section 301(n.0) or a Pennsylvania S corporation as defined in section 301(n.1).

“Pennsylvania production expense.” Production expense incurred in this Commonwealth. The term includes:

(1) Compensation paid to an individual on which the tax imposed by Article III will be paid or accrued.

(2) *Payment to a personal service corporation representing individual talent if the tax imposed by Article IV will be paid or accrued on the net income of the corporation for the taxable year.*

(3) *Payment to a pass-through entity representing individual talent if the tax imposed by Article III will be paid or accrued by all of the partners, members or shareholders of the pass-through entity for the taxable year.*

(4) *The cost of transportation incurred while transporting to or from a train station, bus depot or airport, located in this Commonwealth.*

(5) *The cost of insurance coverage purchased through an insurance agent based in this Commonwealth.*

(6) *The purchase of music or story rights if any of the following subparagraphs apply:*

(i) *The purchase is from a resident of this Commonwealth.*

(ii) *The purchase is from an entity subject to taxation in this Commonwealth, and the transaction is subject to taxation under Article III, IV or VI.*

(7) *The cost of rental of facilities and equipment rented from or through a resident of this Commonwealth or an entity subject to taxation in this Commonwealth.*

“Production expense.” As follows:

(1) *The term includes all of the following:*

(i) *Compensation paid to an individual employed in the production of the film.*

(ii) *Payment to a personal service corporation representing individual talent.*

(iii) *Payment to a pass-through entity representing individual talent.*

(iv) *The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.*

(v) *The cost of leasing vehicles.*

(vi) *The cost of transportation to or from a train station, bus depot or airport.*

(vii) *The cost of insurance coverage.*

(viii) *The costs of food and lodging.*

(ix) *The purchase of music or story rights.*

(x) *The cost of rental of facilities and equipment.*

(2) *The term does not include any of the following:*

(i) *Deferred, leveraged or profit participation paid or to be paid to individuals employed in the production of the film or paid to entities representing an individual for services provided in the production of the film.*

(ii) *Development cost.*

(iii) *Expense incurred in marketing or advertising a film.*

(iv) *Cost related to the sale or assignment of a film production tax credit under section 1705-D(e).*

“Qualified film production expense.” All Pennsylvania production expenses if Pennsylvania production expenses comprise at least 60% of the film’s total production expenses. The term shall not include more than \$15,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the film.

“Qualified tax liability.” The liability for taxes imposed under Article III, IV or VI. The term shall not include any tax withheld by an employer from an employee under Article III.

“Start date.” The first day of principal photography in this Commonwealth.

“Tax credit.” The film production tax credit provided under this article.

“Taxpayer.” A film production company subject to tax under Article III, IV or VI. The term does not include contractors or subcontractors of a film production company.

Section 1703-D. Credit for qualified film production expenses.

(a) *Application.—A taxpayer may apply to the department for a tax credit under this section. The application shall be on the form required by the department.*

(b) *Review and approval.—The department shall review and approve or disapprove the applications in the order in which they are received. Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department may approve the taxpayer for a tax credit.*

(c) *Contract.—If the department approves the taxpayer’s application under subsection (b), the department and the taxpayer shall enter into a contract containing the following:*

(1) *An itemized list of production expenses incurred or to be incurred for the film.*

(2) *An itemized list of Pennsylvania production expenses incurred or to be incurred for the film.*

(3) *With respect to a contract entered into prior to completion of production, a commitment by the taxpayer to incur the qualified film production expenses as itemized.*

(4) *The start date.*

(5) *Any other information the department deems appropriate.*

(d) *Certificate.—Upon execution of the contract required by subsection (c), the department shall award the taxpayer a film production tax credit and issue the taxpayer a film production tax credit certificate.*

Section 1704-D. Film production tax credits.

A taxpayer may claim a tax credit against the qualified tax liability of the taxpayer.

Section 1705-D. Carryover, carryback and assignment of credit.

(a) *General rule.*—If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the 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 the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) *Application.*—A tax credit approved by the department 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 tax credit can be applied against any tax liability under subsection (a).

(c) *No carryback or refund.*—A taxpayer is not entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this article.

(d) *(Reserved).*

(e) *Sale or assignment.*—The following shall apply:

(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this article.

(2) The department and the Department of Revenue shall jointly promulgate regulations for the approval of applications under this subsection.

(3) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue.

(4) Notwithstanding any other provision of law, the Department of Revenue shall settle, assess or determine the tax of an applicant under this subsection within 90 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as *The Fiscal Code*.

(f) *Purchasers and assignees.*—The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit. The purchaser or assignee shall notify the Department of Revenue of the

seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

Section 1706-D. Determination of Pennsylvania production expenses.

In prescribing standards for determining which production expenses are considered Pennsylvania production expenses for purposes of computing the credit provided by this article, the department shall consider:

- (1) The location where services are performed.*
- (2) The location where supplies are consumed.*
- (3) Other factors the department determines are relevant.*

Section 1707-D. Limitations.

(a) Cap.—In no case shall the aggregate amount of tax credits awarded in any fiscal year under this article exceed \$75,000,000.

(b) Individual limitations.—The following shall apply:

(1) The aggregate amount of film production tax credits awarded by the department under section 1703-D(d) to a taxpayer for a film may not exceed 25% of the qualified film production expenses to be incurred.

(2) A taxpayer that has received a grant under 12 Pa.C.S. § 4106 (relating to approval) shall not be eligible for a film production tax credit under this act for the same film.

Section 1708-D. Penalty.

A taxpayer which claims a tax credit and fails to incur the amount of qualified film production expenses agreed to in section 1703-D(c)(3) for a film in that taxable year shall repay to the Commonwealth the amount of the film production tax credit claimed under this article for the film.

Section 1709-D. Pass-through entity.

(a) General rule.—If a pass-through entity has any unused tax credit under section 1705-D, it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) Limitation.—A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under subsection (a) for the same qualified film production expense.

(c) Application.—A shareholder, member or partner of a pass-through entity to whom a credit is transferred under subsection (a) shall immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Section 1710-D. Department guidelines and regulations.

The department shall develop written guidelines for the implementation of the provisions of this article. The guidelines shall be in effect until such time as the department promulgates regulations for the implementation of

the provisions of this article. The department shall promulgate regulations for the implementation of this article within two years of the effective date of this section.

Section 1711-D. Report to General Assembly.

(a) General rule.—No later than June 1, 2008, and September 1 of each year thereafter, the Secretary of Community and Economic Development shall submit a report to the General Assembly summarizing the effectiveness of the tax credit provided by this article. The report shall include the name of the film produced, the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved for, utilized by or sold or assigned by each taxpayer. The report may also include any recommendations for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairman and minority chairman of the Appropriations and Finance Committees of the Senate and the chairman and minority chairman of the Appropriations and Finance Committees of the House of Representatives. In addition to the information set forth above, the report shall include the following information, which shall be separated by geographic location within this Commonwealth:

(1) The amount of credits claimed during the fiscal year by film.

(2) The total amount spent in this Commonwealth during the fiscal year by film.

(3) The total amount of tax revenues generated by this Commonwealth during the fiscal year by film.

(4) The total number of jobs created during the fiscal year by film, including the duration of the jobs.

(b) Public information.—Notwithstanding any law providing for the confidentiality of tax records, the information in the report shall be public information, and all report information shall be posted on the department's Internet website.

Section 1712-D. Film Advisory Board.

(a) Composition.—A Film Advisory Board is established. The board shall work with the Pennsylvania Film Office and the regional film offices to promote the film industry throughout this Commonwealth and to examine and file a written report on the effectiveness of the tax credit and grant programs. The report shall be included in the department's report required under section 1711-D. The board shall consist of the following members:

(1) The Secretary of Community and Economic Development, or a designee.

(2) A member appointed by the Governor.

(3) A member appointed by the President pro tempore of the Senate.

(4) A member appointed by the Minority Leader of the Senate.

(5) A member appointed by the Majority Leader of the House of Representatives.

(6) *A member appointed by the Minority Leader of the House of Representatives.*

(b) *Compensation.—Members of the board shall not be compensated for their service as board members, but shall be compensated for their reasonable expenses. The department shall provide administrative support for the board.*

(c) *Meetings.—The board shall meet no less than twice each year.*

(d) *Chairman.—The members of the board shall elect the chairman.*

ARTICLE XVII-E

RESOURCE ENHANCEMENT AND PROTECTION TAX CREDIT

Section 1701-E. Scope of article.

This article relates to resource enhancement and protection tax credits.

Section 1702-E. 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:

“Agricultural erosion and sedimentation control plan.” A site-specific plan that:

(1) *meets the requirements of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, and 25 Pa. Code Ch. 102 (relating to erosion and sediment control); and*

(2) *identifies best management practices to minimize accelerated erosion and sediment from an agricultural operation.*

“Agricultural operation.” The property on which occur the management and use of farming resources for the production of crops, livestock or poultry or for equine activity.

“Animal concentration areas.” An exterior area of an agricultural operation subject to rainfall where livestock congregate, including a barnyard, a feedlot, a loafing area, an exercise lot or other similar animal confinement area that will not maintain a growing crop, or where deposited manure nutrients are in excess of crop needs. The term does not include areas managed as a pasture or other cropland and pasture accessways if they do not cause direct flow of nutrients to surface water or groundwater.

“Best management practice.” A practice or combination of practices determined by the State Conservation Commission or United States Department of Agriculture Natural Resources and Conservation Service to be effective and practical, considering technological, economic and institutional factors, to manage nutrients and sediment to protect surface water and groundwater.

“Business firm.” An entity authorized to do business in this Commonwealth and subject to the taxes imposed by Article III, IV, VI, VII, VIII, IX or XV.

“Commission.” The State Conservation Commission.

“Conservation district.” A county conservation district established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

“Conservation plan.” A plan, including a schedule for implementation, that identifies site-specific conservation best management practices on an agricultural operation.

“Department.” The Department of Revenue of the Commonwealth.

“Eligible applicants.” A business firm or an individual who is subject to the taxes imposed by Article III, IV, VI, VII, VIII, IX or XV.

“Equine activity.” The term includes the following activities:

- (1) The boarding of equines.
- (2) The training of equines.
- (3) The instruction of people in handling, driving or riding equines.
- (4) The use of equines for riding or driving purposes.
- (5) The pasturing of equines.

The term does not include activity licensed under the act of December 17, 1981 (P.L.435, No.135), known as the Race Horse Industry Reform Act.

“Individual.” A natural person.

“Legacy sediment.” Sediment that meets all of the following conditions:

- (1) Was eroded from upland areas after the arrival of early Pennsylvania settlers and during centuries of intensive land use.
- (2) Was deposited in valley bottoms along stream corridors, burying presettlement streams, floodplains, wetlands and valley bottoms.
- (3) Altered and continues to impair the hydrologic, biologic, aquatic, riparian and water quality functions of presettlement and modern environments.

“Nutrient management plan.” As defined under 3 Pa.C.S. Ch. 5 (relating to nutrient management and odor management).

“Nutrient management specialist.” As defined under 3 Pa.C.S. Ch. 5 (relating to nutrient management and odor management).

“Pass-through entity.” A partnership as defined in section 301(n.0) or a Pennsylvania S corporation as defined in section 301(n.1).

“Qualified tax liability.” The liability for taxes imposed upon an eligible applicant under Article III, IV, VI, VII, VIII, IX or XV. The term shall not include any tax withheld by an employer from an employee under Article III.

“Riparian forest buffer.” An area of mostly trees or shrubs which is adjacent to and up-gradient from watercourses or water bodies and which meets standards established by the United States Department of Agriculture Natural Resources and Conservation Service.

“Technical service provider.” An individual, entity or public agency certified by the United States Department of Agriculture Natural Resources Conservation Service and placed on the approved list to provide technical

services to program participants or to the United States Department of Agriculture program participants.

“USDA-NRCS.” *The United States Department of Agriculture Natural Resources and Conservation Service.*

Section 1703-E. Resource Enhancement and Protection Tax Credit Program.

(a) **Establishment.**—*The Resource Enhancement and Protection Tax Credit Program is established to encourage private investment in the implementation of best management practices on agricultural operations, the planting of riparian forest buffers and the remediation of legacy sediment.*

(b) **Limits.**—*The following limits shall apply:*

(1) *Except as set forth in paragraph (5), an eligible applicant may be granted a maximum of \$150,000 in tax credits under this program.*

(2) *No more than \$150,000 in tax credits shall be granted toward projects for an agricultural operation.*

(3) *An eligible applicant may submit an application for a single project or multiple applications for multiple projects within the limits of this section.*

(4) *There shall be no limit on the amount of tax credits that may be purchased from or be assigned from an eligible applicant.*

(5) *Notwithstanding paragraph (1), there shall be no limit on the amount of tax credits granted to a sponsor under subsection (e).*

(6) *The credits for legacy sediment shall not be issued prior to July 1, 2008. Applications for legacy sediment remediation will not be accepted prior to July 1, 2008.*

(c) **Carryover.**—

(1) *If the eligible applicant cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first granted, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the eligible applicant for those taxable years. Each time that the 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 tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than 15 taxable years following the first taxable year for which the eligible applicant was entitled to claim the credit.*

(2) *A tax credit granted by the department shall be applied against the taxpayer’s qualified tax liability for the current taxable year as of the date on which the credit was granted before the tax credit is applied against any tax liability under paragraph (1).*

(3) *A tax credit granted under this article shall not be carried back or refunded.*

(d) **Sale or assignment of credit.**—

(1) *An eligible applicant, upon application to and approval by the commission, may sell or assign, in whole or in part, a tax credit granted to the eligible applicant under this article if no claim for allowance of the credit is filed within one year from the date the credit is granted by the department under section 1708-E. The commission, in consultation with the department, shall establish guidelines for the approval of applications under this subsection.*

(2) *The purchaser or assignee of a portion of a tax credit under this subsection shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the credit that a purchaser or assignee may use against a qualified tax liability may not exceed 75% of the qualified tax liability for the taxable year. The purchaser or assignee may not carry over, carry back, obtain a refund of or sell or assign the tax credit. The purchaser or assignee shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the department.*

(3) *Before an application is approved, the department must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the department.*

(4) *Notwithstanding any other provision of law, the department shall settle, assess or determine the tax of an applicant under this subsection within 90 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.*

(e) *Sponsorship.—An eligible applicant may be a sponsor by applying for a tax credit for a project authorized under section 1707-E if a written agreement between the eligible applicant and the owner of property on which the project will be completed is submitted to the commission, certifying that the property owner will comply with all the provisions of this article.*

(f) *Tax credits for pass-through entities.—*

(1) *If a pass-through entity has any unused tax credit under section 1704-E, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.*

(2) *The credit provided under paragraph (1) is in addition to any tax credit to which the shareholder, member or partner is otherwise entitled under this article. However, a pass-through entity and its shareholders, members or partners shall not claim a tax credit under this article for the same project authorized under section 1707-E.*

(3) A shareholder, member or partner of a pass-through entity to whom credit is transferred under paragraph (1) shall immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Section 1704-E. Tax credits.

(a) General eligibility.—Projects shall be eligible for a tax credit as follows:

(1) Only best management practices completed after the effective date of this article shall be eligible for a tax credit.

(2) An agricultural operation shall have in place a current conservation plan, a current agricultural erosion and sediment control plan if engaged in plowing and tilling, and a current nutrient management plan if required, or the development of such plans shall be included in an application for a tax credit.

(3) An agricultural operation with an animal concentration area shall have implemented best management practices necessary to abate storm water runoff, loss of sediment, loss of nutrients and runoff of other pollutants from the animal concentration area, or the implementation of such best management practices shall be included in an application for a tax credit.

(4) An agricultural operation with an uncompleted best management practice of either an agricultural erosion and sediment control plan if engaged in plowing and tilling or a nutrient management plan if required shall first include the remaining best management practices included in such plans in an application for a tax credit.

(5) A project shall meet the design and construction standards established by the commission. If standards do not exist for a best management practice approved by the commission, the commission may establish or approve design, construction and certification standards for such a best management practice.

(b) Amount of tax credit.—

(1) A tax credit equal to 75% of the eligible costs under subsection (c) of a project authorized under section 1707-E shall be granted for any of the following:

(i) Development of a voluntary or mandatory nutrient management plan.

(ii) Development of an agricultural erosion and sediment control plan or a conservation plan.

(iii) For an animal concentration area, design and implementation of best management practices necessary to abate storm water runoff, loss of sediment, loss of nutrients and runoff of other pollutants.

(iv) *Design and implementation of best management practices necessary to restrict livestock access to streams if there is established and maintained a riparian forest buffer with a minimum width of 50 feet.*

(v) *Establishment of a riparian forest buffer with a minimum width of 50 feet.*

(2) *A tax credit equal to 50% of the eligible costs under subsection (c) of a project authorized under section 1707-E shall be granted for any of the following:*

(i) *For an agricultural operation, design and implementation of agricultural best management practices or the installation and use of equipment, provided that the best management practice or equipment is necessary to reduce existing sediment and nutrient pollution to surface waters. Such best management practices and equipment shall be identified by the commission and may include manure storage systems, alternative uses for manure, filter strips, grassed waterways, management intensive grazing systems and no-till planting equipment.*

(ii) *Design and implementation of best management practices necessary to exclude livestock access to streams through fencing, stabilized crossings and improved watering systems, if there is established and maintained a vegetated riparian or riparian forest buffer with a minimum width of 35 feet.*

(3) *A tax credit equal to 25% of the eligible costs under subsection (c) of a project authorized under section 1707-E shall be granted for the remediation of legacy sediment if the legacy sediment is exposed and is discharging or threatens to discharge into surface waters as a result of acute stream bank erosion. The project shall meet standards established by the commission as being effective in mitigating or eliminating the harmful effects of legacy sediment.*

(c) *Costs of project.—*

(1) *The following shall be considered eligible costs of a project to which a tax credit may be applied:*

(i) *Project design, engineering and associated planning.*

(ii) *Project management costs, including contracting, document preparation and applications.*

(iii) *Project construction or installation.*

(iv) *Equipment, materials and all other components of projects eligible under subsection (a).*

(v) *Postconstruction inspections.*

(vi) *Interest payments on loans for project implementation for up to one year prior to the award of the tax credit.*

(2) *A tax credit shall not be applied to that portion of a project cost for which public funding was received.*

(3) *Eligible costs of a project shall include any of the services listed in paragraph (1) that may be provided by a conservation district.*

Section 1705-E. Project certification.

A project shall be certified by the commission as meeting standards under section 1704-E(a)(5) by the following:

(1) *a best management practice that currently requires review and certification by a registered professional engineer under current law or applicable regulation: registered professional engineer;*

(2) *riparian forest buffer: technical service provider or staff from a conservation district or USDA-NRCS;*

(3) *nutrient management plan: nutrient management specialist; and*

(4) *agricultural erosion and sediment control plan or conservation plan: any person trained and experienced in erosion and sediment control or conservation methods and techniques and whose qualifications are determined acceptable by the commission.*

Section 1706-E. Project maintenance and life expectancy.

(a) *Best management practice.—An agricultural operation shall maintain a best management practice for the life of the practice as established by the commission. A riparian forest buffer shall be maintained for a minimum of 15 years.*

(b) *Failure.—If the commission determines that a best management practice is not maintained for the period required under subsection (a), the owner of the property upon which the project exists shall return to the department the amount of the tax credit originally granted. Any amount paid to the department under this subsection shall be deposited in the General Fund.*

(c) *Exception.—If the recipient of a tax credit provides prior written notification to the commission that the recipient will be unable to maintain a best management practice due to sale of the property, cessation of an agricultural operation or other factors, the commission may direct the department to prorate the amount of the tax credit that shall be returned based on the remaining lifespan of the best management practice in question.*

Section 1707-E. Application, review and authorization by commission.

(a) *Application process.—An eligible applicant shall apply to the commission for authorization that a project is eligible for a tax credit under this program. An application shall be developed by the commission and shall include:*

(1) *Type and location of project under section 1704-E(b).*

(2) *Total cost of project as outlined in section 1704-E(c).*

(3) *Verification of eligibility under section 1704-E(a).*

(b) *Review, notification and authorization.—The commission shall, within 60 days of receipt, review each application and notify an eligible applicant whether or not the eligible applicant meets the requirements and is authorized to receive a tax credit under this article.*

(c) *Authorization of tax credit.*—The commission shall not authorize tax credits that exceed the limits under sections 1703-E(b) and 1709-E. The commission shall authorize tax credits on a first-come, first-served basis.

(d) *Completion of project.*—Upon completion of a project authorized under this section, an eligible applicant shall submit to the commission written notice of project completion. Such notice shall include:

(1) *Proof of certification as required by section 1705-E that the project is complete.*

(2) *A maintenance plan as required by section 1707-E(a) for each best management practice, if applicable to the project.*

(3) *Any other documents as may be required by the commission.*

(e) *Notification to department.*—Upon determination that a project authorized under this section is complete, the commission shall provide notification to the department:

(1) *that the eligible applicant has completed a project which meets the criteria for a tax credit under this article; and*

(2) *the amount of tax credit for the eligible applicant.*

(f) *Inspection.*—Projects authorized under this section may be subject to inspection by the commission or its designated agent.

Section 1708-E. Grant of tax credit.

The following shall apply:

(1) *The department shall grant a tax credit authorized under section 1707-E. The department shall, within 60 days of receipt of notice under section 1707-E(e), issue a notice of grant of a tax credit to the eligible applicant.*

(2) *Before a tax credit is granted, the department must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement or assessment by the department.*

Section 1709-E. Annual tax credits.

The total amount of tax credits authorized by the commission shall not exceed \$10,000,000 in any fiscal year.

Section 1710-E. Report and public information.

(a) *General rule.*—The commission, in consultation with the department, shall annually report to the General Assembly on the Resource Enhancement and Protection Tax Credit Program as follows:

(1) *The number of projects and the dollar amount of tax credits granted under the program in the aggregate, by best management practice and per project.*

(2) *The types, locations and costs of projects.*

(3) *The estimated benefits of the projects, including pollution reduction.*

(b) *Identity.*—The identity of each taxpayer utilizing a resource enhancement and protection tax credit under this article and the amount

of credits approved and utilized by each taxpayer shall be made available annually within a year of when the credits were granted and shall constitute a public record, notwithstanding any law providing for the confidentiality of tax records. This information regarding taxpayer use of resource enhancement and protection tax credits shall be made available in accordance with the laws applicable to public information and public records generally and need not be included in the annual report to the General Assembly.

Section 8. The definition of "business firm" in section 1902-A of the act, amended May 7, 1997 (P.L.85, No.7), is amended and the section is amended by adding a definition 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 *III*, *IV*, *VI*, *VII*, [*VII-A*, *VIII*, *VIII-A*,] *VIII*, *IX*[, *X*] or *XV* of this act. *The term shall include a pass-through entity.*

"Pass-through entity." A partnership as defined under section 301(n.0) or a Pennsylvania S corporation as defined under section 301(n.1).

Section 9. Section 1904-A of the act, amended April 23, 1998 (P.L.239, No.45), is 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, comprehensive service projects, 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 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 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]. *The secretary shall provide a report listing of all applications received and their disposition in each fiscal year to the General Assembly by October 1 of the following fiscal year. The secretary's report shall include all taxpayers utilizing the credit and the amount of credits approved, sold or assigned. Notwithstanding any law providing for the confidentiality of tax records, the information in the*

report shall be public information, and all report information shall be posted on the secretary's Internet website.

(b.1) The secretary shall take into special consideration, when approving applications for neighborhood assistance tax credits, applications which involve multiple projects in various markets throughout this Commonwealth.

(c) The total amount of tax credit granted for programs approved under this act shall not exceed eighteen million dollars (\$18,000,000) of tax credit in any fiscal year.

(d) A taxpayer, upon application to and approval by the Department of Community and Economic Development, may sell or assign, in whole or in part, a neighborhood assistance tax credit granted to the business firm under this article if no claim for allowance of the credit is filed within one year from the date the credit is granted by the Department of Revenue under section 1905-A. The Department of Community and Economic Development and the Department of Revenue shall jointly promulgate guidelines for the approval of applications under this subsection.

(e) The purchaser or assignee of a neighborhood assistance tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The purchaser or assignee may not carry over, carry back, obtain a refund of or sell or assign the neighborhood assistance tax credit. The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the neighborhood assistance tax credit in compliance with procedures specified by the Department of Revenue.

(f) The neighborhood assistance tax credit approved by the Department of Community and Economic Development shall be applied against the business firm's tax liability for the taxes under section 1905-A for the current taxable year as of the date on which the credit was approved before the neighborhood assistance tax credit may be carried over, sold or assigned.

Section 10. Section 1905-A of the act, amended July 7, 2005 (P.L.149, No.40), is amended to read:

Section 1905-A. Grant of Tax Credit.—The Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, [VII-A, VIII, VIII-A,] VIII, IX[, X] or XV of this act, or any tax substituted in lieu thereof in an amount which shall not exceed [fifty] *fifty-five* per cent of the total amount [invested] *contributed* during the taxable year by [the business firm or twenty] *a business firm or twenty-five* 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] *seventy-five* per cent of the total amount [invested] *contributed* during the taxable year by a business firm or up to [thirty] *thirty-five* 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[.], and *Provided further, That a tax credit of up to seventy-five per cent of the total amount contributed during the taxable year by a business firm in comprehensive service projects with five-year commitments and up to eighty per cent of the total amount contributed during the taxable year by a business firm in comprehensive service projects with six-year or longer commitments shall be granted.* 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 three hundred fifty thousand dollars (\$350,000) annually.] *five hundred thousand dollars (\$500,000) annually for contributions or investments to fewer than four projects or one million two hundred fifty thousand dollars (\$1,250,000) annually for contributions or investments to four or more projects.* 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 *contribution or investment* was made may be carried over for the next five succeeding calendar or fiscal years until the full credit has been allowed. *A business firm shall not be entitled to carry back or obtain a refund of an unused tax credit.* The total amount of all tax credits allowed pursuant to this act shall not exceed eighteen million dollars (\$18,000,000) in any one fiscal year. *Of that amount, two million dollars (\$2,000,000) shall be allocated exclusively for pass-through entities. However, if the total amounts allocated to either the group of applicants, exclusive of pass-through entities, or the group of pass-through entity applicants is not approved in any fiscal year, the unused portion shall become available for use by the other group of qualifying taxpayers.*

Section 11. The act is amended by adding a section to read:

Section 1907-A. Pass-Through Entity.—(a) If a pass-through entity has any unused tax credit under section 1905-A, the entity may elect, in writing, according to the department's procedures, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) The credit provided under subsection (a) is in addition to any neighborhood assistance tax credit to which a shareholder, member or partner of a pass-through entity is otherwise entitled under this article. However, a pass-through entity and a shareholder, member or partner of a pass-through entity may not claim a credit under this article for the same qualified neighborhood assistance investment or contribution.

(c) A shareholder, member or partner of a pass-through entity to whom credit is transferred under subsection (a) must immediately claim the credit

in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Section 12. Section 2005 of the act, amended October 18, 2006 (P.L.1149, No.119), is amended to read:

Section 2005. Assessment by Department.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax due by such person, based upon any information within its possession, or that shall come into its possession.

(b) Promptly after the date of such assessment, the department shall send [by certified mail] a copy of the assessment, including the basis of the assessment, to the person against whom it was made. Within ninety days after the date upon which the copy of any such assessment was mailed, such person may file with the department a petition for reassessment of such taxes. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitle him to such reassessment, and it shall be supported by affidavit that it is not made for the purpose of delay, and that the facts set forth therein are true. It shall be the duty of the department, within six months after the date of any assessment, to dispose of any petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly after the date of reassessment by the department.

(b.1) The notice required by subsection (b) shall be sent by certified mail if the assessment is for \$300 or more.

(c) Within ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing, as hereinafter provided. The Board of Finance and Revenue shall act finally in disposition of such petitions filed with it within six months after they have been received, and, in the event of the failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.

(d) In all cases of petitions for reassessment, review or appeal, the burden of proof shall be upon the petitioner or appellant, as the case may be.

(e) Whenever any assessment of additional tax is not paid within ninety days after the date of the assessment, if no petition for reassessment has been filed, or within ninety days from the date of reassessment, if no petition for review has been filed, or within thirty days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or the expiration of the board's time for acting upon such petition, if no appeal has been made, and in all cases of judicial sales, receiverships, assignments or bankruptcies, the department may call upon the Office of Attorney General to collect such assessment. In such event, in a proceeding for the collection of such taxes, the person against whom they were assessed shall not be permitted to set up any ground of defense that might have been determined by the department, the Board of Finance and Revenue or the courts. The department may also certify to the Liquor Control Board, for such action as the board may deem proper, the fact that any person has failed to pay or duly appeal from such assessment of additional tax. The department may also provide, adopt, promulgate and enforce such rules and regulations, as may be appropriate, to prevent further shipment or transportation of malt or brewed beverages into this Commonwealth by any person against whom such unpaid assessment shall have been made.

Section 13. The act is amended by adding a section to read:

Section 3003.19. Powder Metallurgy Parts.—*For purposes of defining the phrases “doing business in this Commonwealth,” “carrying on activities in this Commonwealth,” “having capital or property employed or used in this Commonwealth” or “owning property in this Commonwealth” in sections 401 and 402 of Article IV and substantially similar phrases in section 601 of Article VI, the following activities shall be excluded:*

(1) Owning or leasing of intangible and tangible property, including dies, molds, tooling and related equipment, by a person who has contracted with an unaffiliated manufacturer of powder metallurgy products for manufacturing, provided that:

(i) the property is for use by the powder metallurgy product manufacturer;

(ii) the property is located at the Pennsylvania premises of the powder metallurgy product manufacturer; and

(iii) the products manufactured using such property are incorporated into products produced outside this Commonwealth by the owner or lessor of the property.

(2) Visits by a person's employes or agents to the premises in this Commonwealth of an unaffiliated powder metallurgy product manufacturer with whom the person has contracted for manufacturing in connection with the contract.

(3) Owning of manufactured powder metallurgy products, and other items packaged therewith, by a person who has contracted with an

unaffiliated powder metallurgy products manufacturer for manufacturing of products, on the premises of the unaffiliated powder metallurgy products manufacturer prior to delivery of the property.

Section 14. The amendment of section 701.1 of the act is not intended to reverse or modify the ruling of *First Union National Bank v. Commonwealth*, 867 A.2d 711 (Pa. Commonwealth 2005).

Section 15. This act shall apply as follows:

(1) The addition of section 3003.19 of the act shall apply to:

(i) taxable years beginning after December 31, 2004; and

(ii) taxable years as to which there is an appeal prior to the effective date of the addition of section 3003.19 of the act.

(2) The following provisions shall apply to assessments issued after December 31, 2007:

(i) The amendment of section 230 of the act.

(ii) The amendment of section 338 of the act.

(iii) The amendment of section 407.1 of the act.

(iv) The amendment of section 1111-C of the act.

(v) The amendment of section 2005 of the act.

(3) 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, 2008.

Section 16. This act shall take effect as follows:

(1) The following provisions shall take effect October 1, 2007:

(i) The amendment of the undesignated paragraph (relating to items not included in definition of term) of section 201(c) of the act.

(ii) The amendment of section 204(54) of the act.

(2) The addition of Article XVII-E of the act shall take effect in 90 days.

(3) The remainder of this act shall take effect immediately.

APPROVED—The 25th day of July, A.D. 2007.

EDWARD G. RENDELL