

No. 105

AN ACT

HB 835

Amending the act of March 4, 1971 (Act 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," clarifying certain provisions, making technical corrections and further defining the powers of the Department of Revenue.

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

Section 1. Subclause (2) of clause (g), subclause (4) of clause (k), phrase (C) and the third paragraph of subclause (8) and subclause (9) of clause (k), subclauses (4) and (5) of clause (o) and clause (p) of section 201; subsection (b) of section 202; clauses (4), (9) and (19) of section 204; section 206; subsection (c) of section 208; section 235; clause (3) of section 241 and sections 255 and 258, act of March 4, 1971 (Act No. 2), known as the "Tax Reform Code of 1971," are amended to read:

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

* * *

(g) "Purchase price."

* * *

(2) There shall be deducted from the purchase price the value of any personal property actually taken in trade or exchange [**within this Commonwealth**] in lieu of the whole or any part of the purchase price. For the purpose of this [**subsection**] *clause*, the amount allowed by reason of personal property actually taken in trade or exchange shall be considered the value of such property.

* * *

(k) "Sale at retail."

* * *

(4) The rendition for a consideration of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes, or applying or installing tangible personal property as a repair or replacement part of other personal property except wearing apparel or shoes for a consideration, whether or not the services are performed directly or by any means other than by coin-operated *self-service laundry*

equipment *for wearing apparel or household goods* and whether or not any tangible personal property is transferred in conjunction therewith, except such services as are rendered in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service.

* * *

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

* * *

(C) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities *which are directly* used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings, *roads, foundations or similar facilities;*

* * *

The exclusions provided in paragraphs (A), (B), (C) and (D) shall not apply to any vehicle required to be registered under The Vehicle Code, except those vehicles used directly by a public utility engaged in business as a common carrier, or to maintenance facilities or to materials or supplies to be used or consumed in any construction, reconstruction, remodeling, repair or maintenance of real estate *other than machinery, equipment or parts therefor that may be affixed to such real estate.*

* * *

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

* * *

(o) "Use."

* * *

(4) The obtaining by a purchaser of the service of repairing, altering, mending, pressing, fitting, dyeing, laundering, drycleaning or cleaning tangible personal property other than wearing apparel or shoes or applying or installing tangible personal property as a repair or replacement part of other personal property other than wearing apparel or shoes, whether or not the services are performed directly or by any means other than by means of coin-operated *self-service laundry*

equipment *for wearing apparel or household goods*, and whether or not any tangible personal property is transferred to the purchaser in conjunction therewith, except such services as are obtained in the construction, reconstruction, remodeling, repair or maintenance of real estate: Provided, however, That this subclause shall not be deemed to impose tax upon such services in the preparation for sale of new items which are excluded from the tax under clause (26) of section 204, or upon diaper service: And provided further, That the term "use" shall not include—

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

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

- (i) The manufacture of personal property;
- (ii) Farming, dairying, agriculture, horticulture or floriculture when engaged in as a business enterprise;
- (iii) The producing, delivering or rendering of a public utility service, or in constructing, reconstructing, remodeling, repairing or maintaining the facilities *which are directly* used in such service, whether or not such facilities constitute real estate: Provided, however, "real estate" shall not include buildings, *roads, foundations or similar facilities*;
- (iv) The processing of personal property as defined in subclause (d) of this section.

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

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

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

* * *

(p) "Vendor." Any person maintaining a place of business in this Commonwealth, selling or leasing tangible personal property, or rendering services, the sale or use of which is subject to the tax imposed by this article *but not including any employe who in the ordinary scope of employment renders services to his employer in exchange for wages and salaries.*

* * *

Section 202. Imposition of Tax.—* * *

(b) There is hereby imposed upon the use, on and after the effective date of this **[act]** *article*, within this Commonwealth of tangible personal property purchased at retail on or after **[March 7, 1956,]** *the effective date of this article*, and on those services described herein purchased at retail on and after **[April 15, 1959,]** *the effective date of this article*, a tax of six per cent of the purchase price, which tax shall be paid to the Commonwealth by the person who makes such use as herein provided, except that such tax shall not be paid to the Commonwealth by such person where he has paid the tax imposed by subsection (a) of this section or has paid the tax imposed by this subsection (b) to the vendor with respect to such use. The tax at the rate of six per cent imposed by this subsection shall not be deemed applicable where the tax has been incurred **[at the rate of three per cent or three and one-half per cent or four per cent or five per cent]** under the provisions of **["The Tax]** *the "Tax Act of 1963 for Education."*

* * *

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

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(4) The sale at retail or use of supplies and materials to be used in the fulfillment of contracts for the construction, reconstruction, remodeling, repairing, maintenance or sale of real estate when such contract was entered into

(i) Prior to March 7, 1956, and is at a fixed price not subject to change or modification by reason of the tax imposed by **[this act]** *the Tax Act of 1963 for Education;* or

(ii) Pursuant to the obligation of a bid or bids submitted prior to March 7, 1956, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of the tax imposed by the act in effect prior to this article.

Provided, however, That notice of such contract or bid by reason of which an exclusion is claimed under this **[subsection] clause** (4) must be given by the taxpayer to the department on or before June 15, 1956.

* * *

(9) The sale at retail or use of tangible personal property or services subject to tax under this article, but which prior to the effective date of this article were excluded from tax under the provisions of the "Tax Act of 1963 for Education" shall be excluded from the tax imposed by this article, provided such sale at retail or use occurred pursuant to and in fulfillment of a written fixed price sales or construction contract or formal bid entered into **[on or after January 1, 1968, but]** prior to the effective date of this article by the person who otherwise would be subject to tax under this article and another, and which contract or bid cannot be altered, modified or withdrawn by the parties. The exclusion from tax provided herein shall not be claimed by any person from a vendor but shall be claimed only by the filing of a refund petition with the department as provided in this article.

* * *

(19) The sale at retail or use of supplies and materials to be used exclusively in the fulfillment of a contract for the construction, reconstruction, remodeling, repairing or maintenance of real estate, when such contract was entered into prior to March 7, 1956, between the person who would otherwise be subject to the tax and a municipal authority, incorporated under the "Municipality Authorities Act of 1945": Provided, That notice of a claim of exemption under this clause is received by the department within fifteen days after the effective date of this clause *under the Tax Act of 1963 for Education*.

* * *

Section 206. Credit Against Tax.—A credit against the tax imposed by this act shall be granted with respect to tangible personal property or services purchased for use outside the Commonwealth equal to the tax paid to another state by reason of the imposition by such other state of a tax similar to the tax imposed by this article: Provided, however, That no such credit shall be granted unless such other state grants substantially similar tax relief by reason of the payment of tax under this **[act] article** *or under the Tax Act of 1963 for Education*.

Section 208. Licenses.—* * *

(c) Any person who, upon the expiration of sixty days after the effective date of this **[act] article**, shall maintain a place of business in this Commonwealth for the purpose of selling or leasing services or tangible personal property, the sale or use of which is subject to tax, without having first been licensed by the department, **[pursuant to the provisions of this**

section] shall be guilty of a summary offense, and upon conviction thereof in a summary proceeding, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300), and in default thereof, to undergo imprisonment of not less than five days nor more than thirty days. The penalties imposed by this section shall be in addition to any other penalties imposed by this article.

* * *

Section 235. Appeal to Commonwealth Court.—Any person aggrieved by the decision of the Board of Finance and Revenue or by the board's failure to act upon a petition for review within six months may, within **[thirty] sixty** days, appeal to the Commonwealth Court from the decision of the board or of the department, as the case may be, *and, except for the sixty-day period for appeal provided herein*, in the manner now or hereafter provided by law for appeals in the case of tax settlements.

Section 241. Collection upon Failure to Request Reassessment, Review or Appeal.—The department may collect any tax:

* * *

(3) Within **[thirty] sixty** days from the date of the decision of the Board of Finance and Revenue upon a petition for review, or of the expiration of the board's time for acting upon such petition, if no appeal has been made; and

* * *

Section 255. Appeal to the Commonwealth Court.—Any person aggrieved by the decision of the Board of Finance and Revenue under section 254, or by the board's failure to act upon a petition for review within six months may, within **[thirty] sixty** days, appeal to the Commonwealth Court from the decision of the board or of the department, as the case may be, *and, except for the sixty-day period for appeal provided herein*, in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

Section 258. Limitation on Assessment and Collection.—The amount of the tax imposed by this act shall be assessed within three years after the date when the return provided for by subsection (a) or (c) **[or under subsection (e)]** of section 217 is filed or the end of the year in which the tax liability arises whichever shall last occur. Any such assessment may be made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

Section 2. The act is amended by adding a section to read:

Section 281.1. Construction of Article.—To the extent that the language of this Article II, is identical to that of equivalent provisions in the Tax Act of 1963 for Education, the said language shall be deemed a reenactment of such identical provisions.

Section 3. Clause (3) of section 401, section 402, subsections (a), (b) and

(f) of section 403, subsections (a), (b) and (d) of section 406, subsections (b) and (c) of section 407, subsection (b) of section 410, clause (3) of section 501, section 502, subsection (b) of section 602, clause (1) of section 901, the heading of Part V of Article IX, the heading of Article X, clause (3) of section 1002 and subsection (b) of section 1201 of the act 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:

* * *

(3) **["Net] "Taxable income"** 1. In case the entire business of the corporation is transacted within this Commonwealth, for any taxable year which begins on or after January 1, 1971, **[net] taxable** income for the calendar year or fiscal year as returned to and ascertained by the Federal Government, or in the case of a corporation participating in the filing of consolidated returns to the Federal Government, the **[net] taxable** income which would have been returned to and ascertained by the Federal Government if separate returns had been made to the Federal Government for the current and prior taxable years, subject, however, to any correction thereof, for fraud, evasion, or error as finally ascertained by the Federal Government: Provided, That additional deductions shall be allowed from **[net] taxable** income on account of any dividends received from any other corporation but only to the extent that such dividends are included in taxable income as returned to and ascertained by the Federal Government: Provided further, That taxable income will include the sum of the following tax preference items as defined in section 57 of the Internal Revenue Code, as amended, (i) excess investment interest; (ii) accelerated depreciation on real property; (iii) accelerated depreciation on personal property subject to a net lease; (iv) amortization of certified pollution control facilities; (v) amortization of railroad rolling stock; (vi) stock options; (vii) reserves for losses on bad debts of financial institutions; (viii) depletion; and (ix) capital gains *but only to the extent that such preference items are not included in "taxable income" as returned to and ascertained by the Federal Government*. No deduction shall be allowed for net operating losses sustained by the corporation during any other fiscal or calendar year. In the case of regulated investment companies as defined by the Internal Revenue Code of 1954, as amended, **["net] "taxable** income" shall be investment company taxable income as defined in the aforesaid Internal Revenue Code of 1954, as amended. In arriving at **["net] "taxable** income" for Federal tax purposes for any taxable year beginning on or after January 1, 1971, any corporate net income tax **[paid] due** to the Commonwealth pursuant to the provisions of this article shall not be allowed as a deduction **[however,] and** the amount of corporate net income tax so **[paid] due** and excluded from **[net] Federal taxable** income *under the Internal Revenue Code* shall not be

apportioned but shall be subject to tax at the rate imposed under this article.

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 **[net] 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 the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

(B) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(C) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employes for personal services.

[(D) “Financial organization” means any safe deposit company, credit union, small loan company, sales finance company, or investment company.

(E)] (D) “Nonbusiness income” means all income other than business income.

[(F) “Public utility” means any business entity which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(G)] (E) “Sales” means all gross receipts of the taxpayer not allocated under this definition *other than gross receipts heretofore or hereafter received from the sale, redemption, maturity or exchange of securities, except those held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.*

[(H)] (F) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

[(I)] (G) “This state” means the **[state in which the relevant tax return is filed] Commonwealth of Pennsylvania** or, in the case of application of this definition to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

(2) Any taxpayer having income from business activity which is taxable

both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this definition.]

(2) *Any taxpayer having income from business activity which is taxable both within and without this State other than activity as a corporation whose allocation and apportionment of income is specifically provided for in section 401 (3) 2 (b) (c) and (d) shall allocate and apportion taxable income as provided in this definition.*

(3) For purposes of allocation and apportionment of income under this definition, a taxpayer is taxable in another state if in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(4) Rents and royalties from real or tangible personal property, [capital] gains, interest, [dividends or] patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs (5) through (8).

(5) (A) Net rents and royalties from real property located in this State are allocable to this State.

(B) Net rents and royalties from tangible personal property are allocable to this State if and to the extent that the property is utilized in this State, or in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(6) (A) [Capital gains] *Gains* and losses from sales *or other disposition* of real property located in this State are allocable to this State.

(B) [Capital gains] *Gains* and losses from sales *or other disposition* of tangible personal property are allocable to this State if the property had a situs in this State at the time of the sale, or the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(C) [Capital gains] *Gains* and losses from sales *or other disposition* of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(7) Interest [and dividends are] *is* allocable to this State if the taxpayer's commercial domicile is in this State.

(8) (A) Patent and copyright royalties are allocable to this State if and to the extent that the patent or copyright is utilized by the payer in this State, or if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(9) All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(10) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period *but shall not include the security interest of any corporation as seller or lessor in personal property sold or leased under a conditional sale, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the sales price of the property.*

(11) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(12) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(13) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

(14) Compensation is paid in this State if:

(A) The individual's service is performed entirely within the State;

(B) The individual's service is performed both within and without [the] *this* State, but the service performed without the State is incidental to the individual's service within [the] *this* State; or

(C) Some of the service is performed in [the] *this* State and the base of operations or if there is no base of operations, the place from which the service is directed or controlled is in [the] *this* State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(15) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(16) Sales of tangible personal property are in this State if the property is delivered or shipped to a purchaser, [other than the United States Government,] within this State regardless of the f.o.b. point or other conditions of the sale.

(17) Sales, other than sales of tangible personal property, are in this State if:

(A) The income-producing activity is performed in this State; or

(B) The income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

(18) If the allocation and apportionment provisions of this definition do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition the Secretary of Revenue or the Secretary of Revenue may require, in respect to all or any part of the taxpayer's business activity:

(A) Separate accounting;

(B) The exclusion of any one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(b) Railroad, Truck, Bus or Airline Companies.

(1) All business income of railroad, truck, bus or airline companies shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which is the taxpayer's total revenue miles within this Commonwealth during the tax period and the denominator of which is the total revenue miles of the taxpayer everywhere during the tax period. For purposes of this [subsection] *paragraph* revenue mile shall mean the average receipts derived from the transportation by the taxpayer of persons or property one mile. Where revenue miles are derived from the transportation of both persons and property, the revenue mile fractions attributable to each such class of transportation shall be computed separately, and the average

of the two fractions, weighted in accordance with the ratio of total receipts from each such class of transportation everywhere to total receipts from both such classes of transportation everywhere, shall be used in apportioning income to this Commonwealth.

(2) Nonbusiness income of railroad, truck, bus or airline companies shall be allocated as provided in paragraphs (5) through (8) of **[clause] phrase** (a) of subclause 2 of the definition of **[net] taxable** income.

(c) Pipeline or Natural Gas Companies.

(1) All business income of pipeline companies shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which is the revenue ton miles, revenue barrel miles or revenue cubic feet miles within this Commonwealth during the tax period and the denominator of which is the total revenue ton miles, revenue barrel miles or the revenue cubic feet miles of the taxpayer everywhere during the tax period. For purposes of this **[subsection] paragraph** a revenue ton mile, revenue barrel mile or a revenue cubic foot mile shall mean respectively the receipts derived from the transportation by the taxpayer of one ton of solid property, one barrel of liquid property or one cubic foot of gaseous property transported one mile.

(2) All business income of natural gas companies subject to regulation by the Federal Power Commission or by the Pennsylvania Public Utility Commission shall be apportioned to this Commonwealth by multiplying the income by a fraction, the numerator of which shall be the cubic foot capacity of the taxpayer's pipelines in this Commonwealth, and the denominator of which shall be the cubic foot capacity of the taxpayer's pipelines everywhere, at the end of the tax period. For the purpose of this **[subsection] paragraph**, the cubic foot capacity of a pipeline shall be determined by multiplying the square of its radius (in feet) by its length (in feet).

(3) Nonbusiness income of pipeline companies or natural gas companies subject to regulation by the Federal Power Commission or by the Pennsylvania Public Utility Commission shall be allocated as provided in paragraphs (5) through (8) of **[clause] phrase** (a) of subclause 2 of the definition of **[net] taxable** income.

(d) Water Transportation Companies.

(1) Water Transportation Companies Operating on High Seas. All business income of water transportation companies operating on high seas shall be apportioned to this Commonwealth by multiplying the business income by a fraction, the numerator of which is the number of port days spent inside the Commonwealth and the denominator of which is the total number of port days spent inside and outside of the Commonwealth. The term "port days" does not include periods when the ships are not in use because of strikes or withheld from service for repair or because of seasonal reduction of services. Days in port are computed by dividing the aggregate number of hours in all ports by twenty-four.

(2) Water Transportation Companies Operating in Inland Waters. All business income of water transportation companies operating on inland waters shall be apportioned to this Commonwealth by multiplying the business income by a fraction, the numerator of which is the taxpayer's total revenue miles within this Commonwealth during the tax period and the denominator of which is the total revenue miles of the taxpayer everywhere during the tax period. In the determination of revenue miles, one-half of the mileage of all navigable waterways bordering between the Commonwealth and another state shall be considered Commonwealth miles. For purposes of this **[subclause] paragraph**, revenue miles shall mean the revenue receipts derived from the transportation by the taxpayer of persons or property one mile.

(3) Nonbusiness income of water transportation companies shall be allocated as provided in paragraphs (5) through (8) of **[clause] phrase** (a) of subclause 2 of the definition of **[net] taxable** income.

3. In case the entire business of a corporation which has filed a timely election and has qualified to be taxed as a regulated investment company under the provisions of 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 **[net] taxable** income of such corporation for the fiscal or calendar year as defined in subclause 1 hereof, as shall be attributable to business transacted within this Commonwealth by multiplying such **[net] taxable** income by a fraction, the numerator of which is the sum of the corporation's gross receipts from (i) sales of its own shares to Pennsylvania investors and (ii) sales of its portfolio securities, where the orders for such sales are placed with or credited to Pennsylvania offices of registered securities dealers and the denominator of which fraction is the corporation's total gross receipts from (i) sales of its own shares and (ii) sales of its portfolio securities. Pennsylvania investors shall mean individuals residing in Pennsylvania at the time of the sale or corporations or other entities having their principal place of business located in Pennsylvania at such time.

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Section 402. Imposition of Tax.—Every corporation shall be subject to, and shall pay for the privilege of doing business in this Commonwealth, or having capital or property employed or used in this Commonwealth, by or in the name of itself, or any person, partnership, association, limited partnership, joint-stock association, or corporation, a State excise tax at the rate of twelve per cent per annum upon each dollar of **[net] taxable** income of such corporation received by, and accruing to, such corporation during the calendar year 1971 and each year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year, and has certified such fact to the department as required by section 403 of this article, in which case, such tax, at the rate of twelve per cent, shall be levied, collected, and paid upon all **[net] taxable** income received

by, and accruing to, such corporation during the fiscal year commencing in the calendar year 1971 [and ending in the calendar year 1972] and during each fiscal year thereafter.

Section 403. Reports and Payment of Tax.—(a) For the purpose of ascertaining the amount of tax payable under this article, it shall be the duty of every corporation, liable to pay tax under this article, on or before April 15, 1972, and each year thereafter, to transmit to the department, upon a form prescribed, prepared and furnished by the department, an annual report under oath or affirmation of its president, vice-president or other principal officer, and of its treasurer or assistant treasurer of net income taxable under the provisions of this article. Such report shall set forth:

(1) A true copy of its return to the Federal Government of the annual [net] *taxable* income arising or accruing in the calendar or fiscal year next preceding, or such part or portions of said return, as the department may designate;

(2) If no return was filed with the Federal Government the report made to the department shall show such information as would have been contained in a return to the Federal Government had one been made; and

(3) Such other information as the department may require.

(b) For the purpose of ascertaining the amount of tax payable under this article for the taxable year 1971, and each taxable year thereafter, it shall be the duty of every corporation liable to pay tax under this article, on or before April 30, 1971, and on or before the end of the fourth month after the close of its previous fiscal year for fiscal year taxpayers, and each year thereafter, to transmit in like form and manner an additional tentative report and make payment pursuant to the provisions of the act of March 16, 1970 [(Act No. 69)] (P.L.180): *Provided, That in making such report and payment for the calendar year 1971 and each year thereafter and for fiscal years commencing during the calendar year 1971, and each year thereafter the tax base from the immediate prior year, upon which the tentative tax computation is to be made under said act of March 16, 1970 (P.L.180), shall be computed as if the tax base for such immediate prior year had been determined under the applicable provisions of the act of March 4, 1971 (Act No. 2).*

* * *

(f) If the corporation shall claim in its report that the return made to the Federal Government was inaccurate, the amount claimed by it to be the [net] *taxable* income, taxable under this article, and the basis of such claim of inaccuracy, shall be fully specified.

Section 406. Changes Made by Federal Government.—(a) If the amount of the [net] *taxable* income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of Internal Revenue or by any other agency or court of the United States, such corporation, within thirty days after the receipt of such final change or correction, shall make a corrected report, under oath or affirmation, to

the department showing such finally changed or corrected **[net] taxable** income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of such correction, which results in an increase in **[net] taxable** income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, there should be any change made in the amount of the **[net] taxable** income of any corporation upon which tax is imposed by this article, the department shall have the power, and its duty shall be to resettle such taxes. Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law, and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made. The resettlement shall be subject to audit and approval by the Department of the Auditor General, as in the case of original settlements, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue, as in the case of original settlements.

* * *

(d) The provisions of this section shall not be construed so as to permit a resettlement based upon the allowance of any deduction on account of net operating losses, sustained in other fiscal or calendar years, that are not allowed as deductions under the definition of **["net] "taxable income"** as contained in this article.

* * *

Section 407. Settlement and Resettlement.—* * *

(b) **[Promptly after the date of any such settlement, the department shall send, by mail or otherwise, a copy thereof to such corporation. The tax imposed by this article shall be settled, resettled, and otherwise imposed and adjusted in the same manner, within the same periods of time, and right of resettlement, review, appeal, and refund, as provided by law in the case of capital stock and franchise taxes imposed upon corporations.]** *If, within a period of one year after the date of any settlement, the department is not satisfied with such settlement, or if at any time the net income as returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States with the result that tax, in addition to the amount paid, is due under this article, the department is hereby authorized and empowered to make a resettlement of the tax due by such corporation, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.*

Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law and shall credit

or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made.

The resettlement shall be subject to audit and approval by the Department of the Auditor General as in the case of original settlement, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue as in the case of original settlements.

(c) [If, within a period of one year after the date of any settlement, the department is not satisfied with such settlement, or if at any time the net income as returned by any corporation to the Federal Government is finally changed or corrected by the Commissioner of Internal Revenue or by any other agency or court of the United States with the result that tax, in addition to the amount paid, is due under this article, the department is hereby authorized and empowered to make a resettlement of the tax due by such corporation, based upon the facts contained in the report, or upon any information within its possession or that shall come into its possession.

Whenever a resettlement shall have been made hereunder, the department shall resettle the account according to law and shall credit or charge, as the case may be, the amount resulting from such resettlement upon the current accounts of the corporation with which it is made.

The resettlement shall be subject to audit and approval by the Department of the Auditor General as in the case of original settlement, and in case of the failure of the two departments to agree, the resettlement shall be submitted to the Board of Finance and Revenue as in the case of original settlements.] *Promptly after the date of any such settlement, the department shall send, by mail or otherwise, a copy thereof to such corporation. Any corporation or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue, or by the board's failure to act upon its petition for review within six months, may within sixty days thereafter appeal to the Commonwealth Court from the decision of the Board of Finance and Revenue.*

* * *

Section 410. Penalties.—* * *

(b) Any person who shall wilfully make a false and fraudulent return of [net] *taxable* income made taxable by this article, shall be guilty of wilful and corrupt perjury, and, upon conviction thereof, shall be subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this article.

* * *

Section 501. 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:

* * *

(3) [“Net] “*Taxable* income.”

1. [Net] *Taxable* income shall be defined as set forth in Article [III.] IV.

2. In the case of corporations owning property or carrying on activities within and without this Commonwealth, the [net] *taxable* income of such corporations derived from sources within this Commonwealth for the fiscal or calendar year shall be determined by allocations and apportionments of [net] *taxable* income as set forth in Article [III.] IV.

* * *

Section 502. Imposition of Tax.—Every corporation carrying on activities in this Commonwealth or owning property in this Commonwealth by or in the name of itself or any person, partnership, joint-stock association or corporation shall be subject to and shall pay a State property tax on [net] *taxable* income derived from sources within this Commonwealth at the rate of twelve per cent per annum upon each dollar of such [net] *taxable* income received by and accruing to such corporation during the calendar year 1971 and each year thereafter, except where a corporation reports to the Federal Government on the basis of a fiscal year and has certified such fact to the department as required by section 403 of Article IV, in which case such tax at the rate of twelve per cent shall be levied, collected and paid upon each dollar of such [net] *taxable* income received by and accruing to such corporation during the fiscal year commencing in the calendar year 1971 and each year thereafter: Provided, however, That such [net] *taxable* income shall not include income for any period for which the corporation is subject to taxation under Article IV.

Section 602. Imposition of Tax.—* * *

(b) Every foreign corporation, joint-stock association, limited partnership, and company whatsoever, from which a report is required under section 601 hereof, shall be subject to and pay into the treasury of the Commonwealth annually, through the Department of Revenue, a franchise tax at the rate of ten mills for the calendar year 1971 and the fiscal year beginning in 1971 and each year thereafter, upon a taxable value to be determined in the following manner. The actual value of its whole capital stock of all kinds, including common, special, and preferred, shall be ascertained in the manner prescribed in section 601 of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV.

The provisions of this [subsection] *article* shall apply to the taxation of corporations, limited partnerships and joint-stock associations organized for manufacturing, processing, research or development purposes.

* * *

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

(1) "Insurance company" means every insurance company,

association or exchange, incorporated or organized by or under the laws of this Commonwealth, the United States, territories, dependencies, other states, or foreign governments, and engaged in transacting insurance business of any kind or classification within this Commonwealth, except *title insurance companies subject to tax under Article VIII of this act and except* purely mutual beneficial associations whose funds for the benefit of members and families or heirs are made up entirely of the weekly, monthly, quarterly, semi-annual or annual contributions to their members and the accumulated interest thereon and corporations organized under the act of June 21, 1937 (P.L.1948), known as the "Nonprofit Hospital Plan Act," and the act of June 27, 1939 (P.L.1125), known as the "Nonprofit Medical, Osteopathic, Dental and Podiatry Service Corporation Act."

* * *

ARTICLE IX

* * *

PART V

REPEALER; EFFECTIVE DATE

* * *

ARTICLE X

[CAPITAL STOCK] *EXCISE TAX ON FOREIGN CORPORATIONS*

* * *

Section 1002. Imposition of Tax.—From and after the effective date of this article, every foreign corporation, in addition to complying with all the laws of the Commonwealth now or hereafter in effect, shall, for the privilege of exercising its franchises in Pennsylvania, pay to the department an excise tax of one-third of one per cent upon the amount of any increase of capital actually employed within this Commonwealth: Provided, That credit shall be allowed for said excise tax in the following cases:

* * *

(3) In arriving at the amount of tax due under this article, a taxpayer shall apportion the increase in capital by the use of the *relevant* formula applicable to the operations of the corporation as set forth in section 401.

Section 1201. Saving Clause.—* * *

(b) Nothing contained in this code shall be construed to relieve any person, corporation or other entity from the filing returns or from any taxes, penalties or interest imposed by the provisions of any laws which were in effect prior to being repealed by this code, or [effect] *affect* or terminate any petitions, investigations, prosecutions, legal or otherwise, or other proceedings pending under the provisions of any such laws or prevent the commencement or further prosecution of any proceedings by

the proper authorities of the Commonwealth for violation of any such laws or for the assessment, settlement, collection or recovery of taxes, penalties or interest due to the Commonwealth under any of the laws which were in effect prior to being repealed by this code.

Section 4. This act shall take effect immediately.

APPROVED—The 9th day of September, A. D. 1971.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 105.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

Secretary of the Commonwealth.