

## No. 1985-29

## AN ACT

## HB 136

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," shifting the burden of proof from vendors to the Department of Revenue on questions concerning the utilization of exemption certificates; eliminating the split second quarter for filing of sales tax returns; reducing the personal income tax rate; permitting the equitable adjustment of taxes and penalties; revising the provisions relating to net loss carryover; adding a definition of "taxable year"; providing a processing exemption for computer software from the capital stock and franchise tax; providing an investment credit; eliminating tentative payments for corporate net income taxes and requiring the payment of estimated taxes; reducing tentative tax payments for the capital stock and franchise tax; changing the time period within which petitions for refunds may be filed; making repeals; and making an appropriation.

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

Section 1. Section 217 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 21, 1983 (P.L.63, No.29), is amended to read:

Section 217. Time for Filing Returns.—(a) **[Monthly, Bimonthly and Quarterly Returns] Quarterly and Monthly Returns:**

(1) For the year in which this article becomes effective and in each year thereafter a return shall be filed quarterly by every licensee on or before the twentieth day of April, July, October and January for the three months ending the last day of March, June, September and December, **[except as hereinafter provided]**.

(2) For the year in which this article becomes effective, and in each year thereafter, a return shall be filed monthly with respect to each month by every licensee whose total tax reported, or in the event no report is filed, the total tax which should have been reported, for the third calendar quarter of the preceding year equals or exceeds six hundred dollars (\$600). Such returns shall be filed on or before the twentieth day of the next succeeding month with respect to which the return is made. **[except that the return due for the month of April, of each year, shall be filed on or before the twentieth day of May next following and the return due for the month of May of each year shall be filed on or before the twentieth day of June next following.]** Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

**[(3) For the year in which this article becomes effective, and for each year thereafter, every licensee required to file a quarterly return for the second calendar quarter shall file a single return for the months of April and May on or before the fifteenth day of June next following. The filing of such return shall not relieve the licensee of the duty to file a return on or before the twentieth day of July next following and to remit therewith tax for the month of June.]**

(b) Annual Returns. For the calendar year 1971, and for each year thereafter, no annual return shall be filed, except as may be required by rules and regulations of the department promulgated and published at least sixty days prior to the end of the year with respect to which the returns are made. Where such annual returns are required licensees shall not be required to file such returns prior to the twentieth day of the year succeeding the year with respect to which the returns are made.

(c) Other Returns. Any person, other than a licensee, liable to pay to the department any tax under this article, shall file a return on or before the twentieth day of the month succeeding the month in which such person becomes liable for the tax.

(d) Small Taxpayers. The department, by regulation, may waive the requirement for the filing of quarterly return in the case of any licensee whose individual tax collections do not exceed seventy-five dollars (\$75) per calendar quarter and may provide for reporting on a less frequent basis in such cases.

Section 2. Section 237(c) of the act, amended March 26, 1976 (P.L.60, No.26), is amended to read:

Section 237. Collection of Tax.—\* \* \*

(c) Exemption Certificates. If the tax does not apply to the sale or lease of tangible personal property or services, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. The certificate shall be in substantially such form as the department may, by regulation, prescribe. Where the tangible personal property or service is of a type which is never subject to the tax imposed or where the sale or lease is in interstate commerce, such certificate need not be furnished. Where a series of transactions are not subject to tax, a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe. The department shall provide all school districts and intermediate units with a permanent tax exemption number. An exemption certificate, which is complete and regular and on its face discloses a valid basis of exemption if taken in good faith, shall relieve the vendor from the liability imposed by this section. An exemption certificate accepted by a vendor from a natural person domiciled within this Commonwealth or any association, fiduciary, partnership, corporation or other entity, either authorized to do business within this Commonwealth or having an established place of business within this Commonwealth, in the ordinary course of the vendor's business, which on its face discloses a valid basis of exemption consistent with the activity of the purchaser and character of the property or service being pur-

chased or which is provided to the vendor by a charitable, religious, educational or volunteer firemen's organization and contains the organization's charitable exemption number and which, in the case of any purchase costing two hundred dollars (\$200) or more, is accompanied by a sworn declaration on a form to be provided by the department of an intended usage of the property or service which would render it nontaxable, shall be presumed to be taken in good faith and the burden of proving otherwise shall be on the Department of Revenue.

\* \* \*

Section 3. Section 253(d) of the act is amended to read:

Section 253. Refund Petition.—\* \* \*

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

Section 4. Section 302 of the act, amended July 21, 1983 (P.L.63, No.29), is amended to read:

Section 302. Imposition of Tax.—(a) There is hereby imposed a tax to be paid by resident individuals, estates or trusts at the annual rate of two and two-tenths per cent for taxable years up to and including the taxable year commencing on or after January 1, 1982, and at the annual rate of two and forty-five hundredths per cent for the taxable year commencing on or after January 1, 1983, and for the first six months of the taxable year commencing on or after January 1, 1984, and at the annual rate of two and thirty-five hundredths per cent for the second six months of the taxable year commencing on or after January 1, 1984, **and for the taxable year commencing on or after January 1, 1985, and at the annual rate of two and two-tenths per cent for the taxable year commencing on or after January 1, 1986**, and for each taxable year thereafter on the privilege of receiving each of the classes of income hereinafter enumerated in section 303.

(b) There is hereby imposed a tax to be paid by nonresident individuals, estates or trusts at the annual rate of two and two-tenths per cent for taxable years up to and including the taxable year commencing on or after January 1, 1982, and at the annual rate of two and forty-five hundredths per cent for the taxable year commencing on or after January 1, 1983, and for the first six months of the taxable year commencing on or after January 1, 1984, and at

the annual rate of two and thirty-five hundredths per cent for the second six months of the taxable year commencing on or after January 1, 1984, *and for the taxable year commencing on or after January 1, 1985, and at the annual rate of two and two-tenths per cent for the taxable year commencing on or after January 1, 1986*, and for each taxable year thereafter on the privilege of receiving each of the classes of income enumerated in section 303 from sources within this Commonwealth.

Section 5. Sections 346(a) and 347 of the act, added August 31, 1971 (P.L.362, No.93), are amended to read:

Section 346. Refund or Credit of Overpayment.—(a) In the case of any **[overpayment]** *payment of tax not due under this article*, the department may credit the amount of such overpayment against any liability in respect of the tax imposed by this article on the part of the person who made the overpayment and shall refund any balance to such person.

\* \* \*

Section 347. Restrictions on Refunds.—No credit or refund shall be made under section 346 without the approval of the Board of Finance and Revenue, except such credits or refunds as arise:

- (1) By reason of the overpayment of an installment of estimated tax;
- (2) Upon *reassessment or upon* the filing of a final return *or amended final return* showing [less tax due after the application of the allowable credits than the amount of tax withheld from the taxpayer's compensation or the amount of tax paid by him as estimated tax under this act or pursuant to Article III of the act of March 4, 1971 (Act No.2)] *any overpayment of tax*.

Section 6. Section 348 of the act is amended by adding a subsection to read:

Section 348. Limitations on Assessment and Collection.—\* \* \*

(e) *The department may, within three years of the granting of any refund or credit or within the period in which an assessment or reassessment could have been filed by the department with respect to the taxable period for which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.*

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

*Section 352.1. Abatement of Additions or Penalties.—Upon the filing of a petition for reassessment or petition for review by a taxpayer (other than an employer) as provided by this article, the department may waive or abate, in whole or in part, additions or penalties of three hundred dollars (\$300) or less imposed upon such taxpayer for a taxable year, where the taxpayer has established that he acted in good faith with no negligence or intent to defraud.*

Section 8. Section 401(3)4 of the act, added December 23, 1983 (P.L.370, No.90), is amended and the section is amended by adding a clause 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) "Taxable income." \* \* \*

4. (a) For taxable years beginning in 1982 and thereafter, a net loss deduction shall be allowed from taxable income as arrived at under subclause 1 or, if applicable, subclause 2.

(b) A net loss for a taxable year is the negative amount for said taxable year determined under subclause 1 or, if applicable, subclause 2. Negative amounts under subclause 1 shall be allocated and apportioned in the same manner as positive amounts.

(c) The net loss deduction shall be the lesser of the amount of the net loss or losses which may be carried over to the taxable year or taxable income as determined under subclause 1 or, if applicable, subclause 2. A net loss for a taxable year may only be carried over pursuant to the following schedule:

Taxable Year	Carryover
1981	1 <i>taxable</i> year
1982	2 <i>taxable</i> years
1983 and thereafter	3 <i>taxable</i> years

The earliest net loss shall be carried over to the earliest taxable year to which it may be carried under this schedule.

(d) No loss shall be a carryover from a taxable year when the corporation elects to be treated as a Pennsylvania S corporation pursuant to section 307 of Article III of this act to a taxable year when the corporation is subject to the tax imposed under this article.

(e) Paragraph (d) shall not prevent a taxable year when a corporation is a Pennsylvania S corporation from being considered a taxable year for determining the number of *taxable* years to which a net loss may be a carryover.

(f) For purposes of the net loss deduction, the short taxable year of a corporation, after the revocation or termination of an election to be treated as a Pennsylvania S corporation pursuant to sections 307.3 and 307.4 of Article III of this act, shall be treated as a taxable year.

***(g) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of a corporation in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, the limitations provided in the Internal Revenue Code with respect to net operating losses shall apply for the purpose of computing the portion of a net loss carryover recognized under paragraph (3)4(c) of this section. When any acquiring corporation or a transferor corporation participated in the filing of consolidated returns to the Federal Government, the entitlement of the acquiring corporation to the Pennsylvania net loss carryover of the acquiring corporation or the transferor corporation will be determined as if separate returns to the Federal Government had been filed prior to the change in ownership by purchase, liquidation, acquisition of stock or reorganization.***

\* \* \*

(5) "Taxable year." *The taxable year which the corporation, or any consolidated group with which the corporation participates in the filing of consolidated returns, actually uses in reporting taxable income to the Federal Government. With regard to the tax imposed by Article IV of this act (relating to the Corporate Net Income Tax), the terms "annual year," "fiscal*

*year,” “annual or fiscal year,” “tax year” and “tax period” shall be the same as the corporation’s taxable year, as defined in this paragraph.*

Section 9. Section 403(b) and (c) of the act, amended September 9, 1971 (P.L.437, No.105), are amended to read:

Section 403. Reports and Payment of Tax.—\* \* \*

(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 (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). *For taxable years commencing with calendar year 1986 and for each taxable year thereafter, corporations shall not report and pay tentative tax on account of the corporate net income tax, but shall, on or before April 15 for calendar year taxpayers and on or before the fifteenth day of the fourth month of the fiscal year for fiscal year taxpayers, report and pay estimated corporate net income tax pursuant to section 3003.2 of this act: Provided, however, That tentative tax on account of any other tax which is imposed as the result of the adoption by reference of this part or section shall continue to be imposed.*

(c) The amount of all taxes, imposed under the provisions of this article, not paid on or before the times as above provided, shall bear interest [at the rate of six per cent per annum] as provided in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as “The Fiscal Code,” from the date they are due and payable until paid, except that if the taxable income has been, or is increased by the Commissioner of Internal Revenue, or by any other agency or court of the United States, interest shall be computed on the additional tax due from thirty days after the corporation receives notice of the change of income until paid: Provided, however, That any corporation may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute a petition for resettlement, a petition for review, or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such corporation, which may be used by it in the manner prescribed by law.

\* \* \*

Section 10. Section 601(b) of the act, amended December 23, 1983 (P.L.360, No.89), is amended and the definition of “processing” in subsection (a) is amended by adding a clause to read:

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

\* \* \*

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

\* \* \*

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

\* \* \*

(b) It shall be the duty of every domestic and foreign entity to make **[annually] for each taxable year, as defined in section 401(5),** a written report verified in accordance with the requirements of the department on a form or forms to be prescribed and furnished by it setting forth the information required. The time for filing **[annual]** reports may be extended; **[an entity may be permitted to file its annual and tentative reports on a fiscal year basis;]** the procedure in case the department is not satisfied with the reports for the entity, and the penalties for failing to file reports and pay taxes shall be as prescribed by law.

Section 11. Sections 602 and 1502 of the act are amended by adding subsections to read:

Section 602. Imposition of Tax.—\* \* \*

*(g) In the event that a domestic or foreign entity is required to file a report pursuant to section 601(b) on other than an annual basis, the tax imposed by this section, including the seventy-five dollars (\$75) minimum tax, shall be prorated to reflect the portion of a taxable year for which the report is filed by multiplying the tax liability by a fraction equal to the number of days in the taxable year divided by three hundred sixty-five days.*

Section 1502. Imposition; Report and Payment of Tax; Exemptions.—\* \* \*

*(e.1) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of a mutual thrift institution in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, the limitations provided in the Internal Revenue Code with respect to net operating losses shall apply for the purpose of computing the portion of a net loss carryover recognized pursuant to this article. When any acquiring institution or a transferor institution participated in the filing of consolidated returns to the Federal Government, the entitlement of the acquiring institution to the Pennsylvania net loss carryover of the acquiring institution or the transferor institution will be determined as if separate returns to the Federal Government had been filed prior to the change in ownership by purchase, liquidation, acquisition of stock or reorganization.*

Section 12. The act is amended by adding an article to read:

**ARTICLE XVII**  
**ECONOMIC REVITALIZATION TAX CREDIT**

*Section 1701. Short Title.*—This article shall be known and may be cited as the *Pennsylvania Economic Revitalization Tax Credit Law*.

*Section 1702. Legislative Intent.*—The General Assembly of the Commonwealth of Pennsylvania hereby finds that:

(a) *Whereas, in certain regions of this Commonwealth, industries and other businesses important to the economic well-being of this State suffered substantial losses during the recent recession and, because of these losses, closed plants and other facilities and laid off thousands of Pennsylvania workers; and*

(b) *Whereas, many of these distressed industries have not yet sufficiently returned to profitability to recover their losses and either rehire laid-off workers or expand their employment in Pennsylvania; and*

(c) *Whereas, new capital investments for the economic revitalization of these distressed industries during the current economic expansion are crucial in order to rehire laid-off workers, expand employment and avoid even more serious economic dislocations within this Commonwealth in any future economic recessions;*

(d) *Therefore, it is in the public interest to provide tax credits to distressed industries and other businesses for new investments above threshold investment levels which will cause the rehiring of laid-off Pennsylvania workers or will result in the retention of existing jobs or the creation of expanded permanent employment opportunities in these distressed industries within Pennsylvania.*

*Section 1703. Tax Credit.*—Any taxpayer subject to Article IV of this act (relating to corporate net income tax) for which a net loss for tax years beginning in 1981 or 1982 is not used as a deduction pursuant to section 401(3)4 of this act (relating to definition of taxable income) may apply for a credit pursuant to this article. Upon approval of an application, and submission and approval of a report showing evidence that approved investments have been made pursuant to section 1710(f), the Secretary of Revenue shall award to the taxpayer a credit which may be utilized in the manner provided by section 1708 of this article.

*Section 1704. Qualified Investment Projects.*—(a) *A qualified investment project consists of expenditures for the acquisition or construction of new depreciable property with a cost-recovery period of five years or more and of expenditures for the substantial renovation, restoration or reconstruction of existing equipment, buildings or structures with a cost-recovery period of five years or more. The investment project of the taxpayer may include expenditures which do not meet the requirements of this section, but only the portion of such expenditures which meet the requirements of this section shall be deemed a qualified investment project.*

(b) *Qualified investment projects shall be limited to expenditures by the taxpayer for property for use by the taxpayer within this Commonwealth directly for manufacturing, processing and research and development activities, as defined in Article VI.*



(c) *Qualified investment projects shall not include investments for vehicles, office furnishings, livestock, public utility property, cable television property, telecommunications property, movie and television films and tapes, vending machines, lodging facilities, restaurants, and commercial retail or wholesale property.*

(d) *Qualified investment projects for which a credit is claimed shall consist of otherwise eligible expenditures for which the taxpayer demonstrates that the investments will result in the permanent rehiring of previously laid-off workers in Pennsylvania, the permanent retention of existing jobs in Pennsylvania or the expansion of permanent employment by the taxpayer within this Commonwealth.*

(e) *Qualified investment projects must be certified by the Board of the Ben Franklin Partnership Fund established in section 448(n) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," as meeting the requirements of this article.*

(f) *Expenditures for qualified investment projects must be made between January 1, 1986, and the last day of any tax year beginning in 1988.*

*Section 1705. Threshold Level.—A taxpayer may apply for credits for qualified investment projects only if the taxpayer certifies that total manufacturing, processing and research and development investments to be made within Pennsylvania by the taxpayer for the taxable year for which a credit is claimed will exceed a threshold level equal to one per cent of the book value of manufacturing, processing and research and development assets in Pennsylvania for the tax year beginning in 1982. The threshold level of manufacturing, processing and research and development assets in place within this Commonwealth during the tax year beginning in 1982 shall be measured by the difference between the numerators of the taxpayer's corporate net income tax and capital stock or franchise tax property apportionment fractions, or such fractions as would have been reported for any taxpayer not reporting any such property apportionment fractions. For the purpose of calculating the threshold level, the taxpayer shall recalculate the appropriate property apportionment fractions to include the assets of any corporation which reported as a separate taxpayer to Pennsylvania during the tax year beginning in 1982, but which is included within a single tax report filed by the taxpayer for all or a portion of the taxable year for which a credit is claimed.*

*Section 1706. Portion of Excess Net Loss Carryover Claimable as Credit.—In the calculation of credits pursuant to this article, a taxpayer may utilize nine and one-half per cent of any net loss for taxable years beginning in 1981 and 1982 not used as a deduction pursuant to section 401(3)4 of this act. A net loss may be utilized in the calculation of credits pursuant to this article only to the extent such carryovers are recognizable as deductions pursuant to section 401(3)4(g) and have not been previously utilized for the award of credits pursuant to this article. For purposes of determining the amount of net loss for which a credit may be claimed, the taxpayer shall reduce the amount of the loss by all depreciation deductions claimed for taxable years beginning in 1981 or 1982 with respect to assets for which tax benefits were transferred to the taxpayer under the provisions of*

*section 168(f)(8) of the Internal Revenue Code of 1954, as amended (68A Stat. 3, 26 U.S.C. § 168(f)(8)), taking into account the applicable apportionment fraction for the respective tax years.*

*Section 1707. Amount of Credit.—A taxpayer may claim a credit for twenty per cent of expenditures for qualified investment projects but only to the extent that such expenditures are in excess of the threshold level and do not exceed the portion of the taxpayer's net loss claimable as a credit as determined pursuant to section 1706 of this article.*

*Section 1708. Utilization of Credits.—(a) Credits awarded pursuant to this article may be used to pay any tax or other obligation due and payable as an unrestricted receipt to the General Fund of this Commonwealth, but may not be utilized to pay taxes pursuant to Article III or to pay any fines or penalties.*

*(b) Credits awarded pursuant to this article may be utilized in the taxable year awarded and, to the extent not utilized, carried over for up to three additional taxable years by the taxpayer and shall thereafter expire. In the event that the credits awarded pursuant to this article exceed the liability of the taxpayer for payments described in subsection (a) of this section and the taxpayer has no outstanding obligations arising under Article III or outstanding fines or penalties, the taxpayer may petition for a cash refund in the manner provided by law.*

*(c) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of a corporation in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, the limitations provided in section 401(3)4(g) of this act with respect to the carry-over of net losses shall apply in the same manner with respect to the carry-over of any unused credit.*

*Section 1709. Recapture of Credits.—If any property for which a taxpayer is awarded credits pursuant to this article is disposed of prior to the completion of its cost-recovery period utilized for the purposes of reporting to the Federal Government, a portion of such credit shall be added to the tax liability of the taxpayer for the taxable year of such disposition equal to the percentage which the number of years remaining in the cost-recovery schedule of the property represents to the total years of cost recovery which could have been claimed but for the disposition. For the purposes of calculating the recapture percentage, the year of disposition shall be considered a year of remaining cost recovery. The recapture of tax credits may be waived by the Board of the Ben Franklin Partnership Fund if the disposed property is replaced by the taxpayer by new plant or equipment investments within Pennsylvania which meet the requirements of section 1704(d).*

*Section 1710. Application Procedures.—(a) Applications for credits pursuant to this article shall be filed with the Secretary of Revenue not later than February 1 or August 1 based upon planned expenditures for qualified investment projects to be made in the current tax year or an upcoming taxable year. In addition to any other information as may be required pursuant to this article, the application shall include:*

*(1) a five-year history of the applicant's investment and employment activities in this Commonwealth;*

*(2) a detailed description of the qualified investment projects in excess of the threshold level for which a credit is requested;*

*(3) an explanation of how the investments for which the credit is claimed will result in the rehiring of laid-off workers, the retention of existing jobs in Pennsylvania or the expansion of employment within this Commonwealth, and a quantitative estimate of the impact of such investment upon employment; and*

*(4) the identification of other forms of Federal, State and local economic development assistance being utilized by the taxpayer, including, but not limited to, industrial development loans, Pennsylvania Industrial Development Agency loans, job training assistance and other low-interest loans or grants being received by the taxpayer.*

*(b) The secretary shall review all applications received and shall certify whether or not expenditures for which credits are requested will meet the requirements for qualified investment projects set forth in section 1704(a), (b) and (c) and whether or not all or a specified portion of the expenditures will be in excess of the threshold level and shall certify the portion of excess net loss claimable as credit and the amount of credit for which the taxpayer may be eligible pursuant to section 1707. The secretary shall forward all such certifications, together with all such applications submitted by taxpayers, to the Board of the Ben Franklin Partnership Fund. Information forwarded to the Board of the Ben Franklin Partnership Fund by the secretary shall constitute "public records" pursuant to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.*

*(c) The Board of the Ben Franklin Partnership Fund shall review all applications received from the Secretary of Revenue and approve, in whole or in part, those applications which, in the judgment of the board, will best contribute to the purposes and objectives of this article. The board shall certify to the Secretary of Revenue the amount of credits approved, and the secretary shall notify the taxpayer that appropriate credits will be entered upon the accounts of the taxpayer upon the submission of evidence to the secretary that expenditures for which the application was approved have been made by the taxpayer.*

*(d) In the review of applications, the Board of the Ben Franklin Partnership Fund shall make its decisions on the basis of criteria, including, but not limited to:*

*(1) the long-term employment potential resulting from the investment, including projected jobs retained and created over a five-year period;*

*(2) the market demand for products resulting from such investments;*

*(3) the anticipated increase in Pennsylvania's share of domestic and international markets from new markets captured from out-of-state or foreign competitors due to such investments; and*

*(4) the utilization by the taxpayer of new and advanced technologies in such investments which are likely to permanently enhance the taxpayer's competitive position within its industry or business.*

(e) *The Board of the Ben Franklin Partnership Fund shall limit total credits approved for any taxpayer, together with any credit awarded to a subsidiary corporation of the taxpayer, to an amount not in excess of six million two hundred and fifty thousand dollars (\$6,250,000) and shall limit total credits approved pursuant to this article to an amount not in excess of twenty-five million dollars (\$25,000,000). A subsidiary corporation shall be defined in the manner provided by section 601.*

(f) *On or before the fifteenth day of the fourth month following the end of any taxable year for which credits are requested, the taxpayer shall file a report with the Secretary of Revenue showing the actual amount of investment made during such period. If expenditures for qualified investments for which credits have been approved plus other expenditures for manufacturing, processing or research and development investments within this Commonwealth exceed the threshold level, the secretary shall enter such credits as the taxpayer may be entitled to pursuant to section 1707 upon the account of the taxpayer. If actual investments made are less than the amount upon which any credits approved were based, the secretary shall reduce the amount of credits awarded to that taxpayer by an appropriate fractional amount of the deficiency of such investment.*

(g) *The Secretary of Revenue and the Board of the Ben Franklin Partnership Fund shall jointly establish procedures for the application by taxpayers for credits pursuant to this article, the review and approval or disapproval of such applications, and the calculation, award and utilization of such credits. The secretary and the board may jointly promulgate rules and regulations, statements of policy, forms and other rulings and interpretations necessary to implement this article.*

**Section 1711. Appropriation.**—*The sum of twenty-five million dollars (\$25,000,000) is hereby appropriated from the General Fund of the Commonwealth to the Department of Revenue for the payment of tax credits pursuant to this article. This appropriation shall continue until June 30, 1988. This appropriation may only be encumbered upon the approval of applications pursuant to section 1710(c), pending the submission of reports by the taxpayer as required by section 1710(f).*

**Section 1712. Annual Reports.**—(a) *On or before November 1, 1986, and for each year thereafter, the Board of the Ben Franklin Partnership Fund, in cooperation with the Secretary of Revenue, shall provide the General Assembly with a report showing the following information for the period beginning with the effective date of this article and ending on the last day of September:*

(i) *The amount of tax credits approved for each taxpayer pursuant to this article.*

(ii) *The name of each such taxpayer.*

(iii) *A description of the qualified property, including its location, for which the credit was granted.*

(iv) *The number of workers to be rehired at each location, the number of jobs to be retained at each location and the number of new jobs created at each location, as certified by the board.*

(v) *The amount of tax credits utilized by each taxpayer pursuant to this article.*

(vi) *The information contained in the applications, whether approved or rejected, as specified in section 1710.*

(b) *The provisions of section 408(b) of this act relating to confidentiality of information, and any other provisions of law preventing the disclosure of information required pursuant to subsection (a) of this section, shall not apply when the information is divulged for the purposes of subsection (a) of this section.*

**Section 1713. Evaluation of Tax Credit.**—*Within six months of the exhaustion of credits pursuant to section 1710(e), but not later than November 1, 1988, the Board of the Ben Franklin Partnership Fund, in cooperation with the Secretary of Revenue, shall report to the Governor and to the General Assembly concerning the impact of the credits provided by this article upon investments made by distressed industries. The report shall discuss whether tax credits of the type provided by this article are an efficient and effective method of encouraging new investment by distressed industries and shall recommend whether this article should be reauthorized or extended.*

**Section 1714. Sunset.**—*No application for credits pursuant to this article shall be approved by the Board of the Ben Franklin Partnership Fund after June 30, 1988.*

Section 13. Section 3003(b), (c) and the first paragraph of (d) of the act, amended December 21, 1981 (P.L.482, No.141) and December 1, 1983 (P.L.228, No.66), are amended and the section is amended by adding a subsection to read:

Section 3003. Prepayment of Tax.—\* \* \*

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

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

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

(c) Payment of taxes imposed by Articles IV, [V,] IX [and], XI and XV of this act [and by the act of June 22, 1964 (P.L.16, No.2), known as "The Mutual Thrift Institutions Tax Act,"] may at the taxpayer's election be an amount estimated by the taxpayer which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current calendar or fiscal year.

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

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

\* \* \*

Section 14. The act is amended by adding sections to read:

*Section 3003.1. Petitions for Refunds.—When any tax or other money has been paid to the Commonwealth under a provision of this act or any other statute subsequently held by final judgment of a court of competent jurisdiction to be unconstitutional or under an interpretation of such provision subsequently held by such court to be erroneous, a petition for refund may be filed with the Board of Finance and Revenue either prior or subsequent to such final judgment but must be filed within three years of the payment of which a refund is requested, or within three years of the settlement of such taxes or other moneys due the Commonwealth, whichever period last expires. The board shall have jurisdiction to hear and determine any petition for refund filed prior to such final judgment only if, at the time*

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

**Section 3003.2. Estimated Corporate Net Income Tax.—**  
*(a) Corporations Required to Pay Estimated Tax. Every corporation subject to the corporate net income tax imposed by Article IV of this act, commencing with the calendar year 1986 and fiscal years beginning during the calendar year 1986 and each taxable year thereafter, shall make payments of estimated tax during its taxable year as provided herein.*

*(b) Estimated Tax Defined. For purposes of sections 3003.2 through 3003.4 of this article, "estimated tax" means the amount which the corporation estimates as the amount of tax imposed by section 402 of Article IV for the taxable year.*

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

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

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

*(f) Installments Paid in Advance. At the election of the corporation, any installment of estimated tax may be paid before the date prescribed for its payment.*

**Section 3003.3. Underpayment of Estimated Tax.—***(a) Addition to the Tax. In case of any underpayment of an installment of estimated tax by a corporation, there shall be imposed an addition to the tax for the taxable year in an amount determined at the annual rate as provided by law for the payment of interest upon the amount of the underpayment for the period of the underpayment, except that, in case of any substantial underpayment of estimated tax by a corporation, such addition to the tax for the taxable year shall be imposed in an amount determined at one hundred twenty per cent of the annual rate as provided by law for the payment of interest upon the entire underpayment for the period of the substantial underpayment. For the purpose of this subsection, a substantial underpayment shall be deemed to*

*exist for any period during which the amount of the underpayment equals or exceeds twenty-five per cent of the cumulative amount of installments of estimated tax which would be required to be paid if the estimated tax were equal to the amount as determined in subsection (b)(1).*

*(b) Amount of Underpayment:*

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

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

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

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

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

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

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

*(d) Exception. Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment of estimated tax shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were an amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the report of the corporation for, and the law applicable to, the second preceding taxable year, if a report showing a liability for tax was filed by the corporation for the second preceding taxable year and such second preceding year was a taxable year of twelve months. Provided, however, that if the settled tax for the second preceding year exceeds the tax shown on such report by ten per cent or more, the settled tax adjusted to reflect the current tax rate shall be used for purposes of this subsection, except that, if the settled tax is subsequently resettled, the amount of tax as resettled shall be utilized in the application of this subsection without the necessity of the filing of any petition by the department or by the corporation. In the event that the settled or resettled tax for the second preceding year exceeds the tax shown on the report by ten per cent or more, an addition to the tax resulting from the utilization of such settled or reset-*



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

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

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

Section 15. Section 503(a)(4) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, and 72 Pa.C.S. § 1781(d)(4)(relating to refund of tax) are repealed absolutely with respect to taxes and other moneys due, paid, settled, assessed, determined or appraised on or after January 1, 1985.

Section 16. (a) The amendments to section 401(3)4(g) shall apply retroactively to the first day of any taxable year beginning in 1981 and thereafter for the purpose of limiting the portion of excess net loss deductions claimable as a credit under Article XVII.

(b) The amendments to section 253 and adding section 3003.1 shall apply to taxes and other moneys due, paid, settled, assessed, determined or appraised on or after January 1, 1985.

(c) The amendments to sections 217, 403(b) and 3003, and adding sections 3003.2, 3003.3 and 3003.4 shall apply to taxable years beginning on or after January 1, 1986.

(d) The amendments to section 601(a), adding a computer software exemption to the definition of "processing," shall apply to taxable years beginning on or after January 1, 1985.

(e) The amendments to section 237(c) and the addition of Article XVII shall take effect in 60 days.

(f) The remainder of this act shall take effect immediately, except that the amendments to sections 401(3)4, 401(5), 601(b), 602 and 1502 shall be deemed a clarification of preexisting law and shall not be deemed to imply a contrary legislative intent prior to the effective date of such amendments.

APPROVED—The 1st day of July, A. D. 1985.

DICK THORNBURGH