

## No. 1988-106

## AN ACT

## HB 1475

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," increasing the level of income for special property tax provisions; further providing for the mutual thrift institutions tax and for economic revitalization tax credits; requiring timely filing of certain returns; and further providing for the prepayment of certain taxes.

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

Section 1. Section 304(d)(1) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 13, 1987 (P.L.317, No.58), is amended to read:

Section 304. Special Tax Provisions for Poverty.—\* \* \*

(d) Any claim for special tax provisions hereunder shall be determined in accordance with the following:

(1) If the poverty income of the claimant during an entire taxable year is **[four thousand five hundred dollars (\$4,500)]** *six thousand three hundred dollars (\$6,300)* or less, the claimant shall be entitled to a refund or forgiveness of any moneys which have been paid over to (or would except for the provisions of this act be payable to) the Commonwealth under the provisions of this article, with an additional income allowance of one thousand five hundred dollars (\$1,500) for the first additional dependent and an additional income allowance of one thousand dollars (\$1,000) for each additional dependent of the claimant.

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Section 2. Section 1501 of the act, added December 1, 1983 (P.L.228, No.66), is amended to read:

Section 1501. Definitions.—[As used in this article "mutual thrift institution" shall be construed to mean every savings bank without capital stock incorporated by or under any law of this Commonwealth, every building and loan association, every savings and loan association incorporated under the laws of this Commonwealth, every Federal savings and loan association incorporated under the laws of the United States and every savings institution having capital stock incorporated by or under any law of this Commonwealth or under any law of the United States and located within this Commonwealth.] *The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:*

**“Deposits.”**

(1) *The unpaid balance of money or its equivalent which is received or held by an institution in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other similar name, or a check or draft drawn against a deposit account and certified by the institution or a letter of credit or a traveler's check on which the institution is primarily liable: Provided, That, without limiting the generality of the term “money or its equivalent,” any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts or other instruments forwarded to such institution for collection.*

(2) *Trust funds received or held by an institution, whether held in the trust department or held or deposited in any other department of the institution.*

(3) *Money received or held by an institution, or the credit given for money or its equivalent received or held by an institution in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due to the institution or others (including funds held as dealers reserves) or for securities loaned by the institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: Provided, That there shall not be included funds which are received by the institution for immediate application to the reduction of an indebtedness to the receiving institution or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness.*

(4) *Outstanding drafts (including advice or authorization to charge an institution's balance in another institution or bank), cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose, but not including those issued in payment for services, dividends, or purchases or other costs or expenses of the institution itself.*

(5) *Deposits do not include deposits made by the Federal Government, its agencies and instrumentalities.*

**“Employe.”** *Any individual to whom wages are paid within the meaning of 26 U.S.C. § 3401.*

**“Lease.”** *Any leasing transaction in which the lessor would be treated as owner of the leased property under generally accepted accounting principles. All other transactions purporting to be leases shall be treated as loans for purposes of this article.*

**“Located.”** An institution is located in this Commonwealth in a taxable year only if any one of the following apply:

- (1) Such institution maintains an office here.
- (2) One or more employes of the institution has or have a regular presence here.
- (3) Such institution has employes, representatives or independent contractors conducting business activities in its behalf in this Commonwealth.
- (4) Such institution engages in regular solicitation in this Commonwealth (whether at a place of business, by traveling loan officers or other representatives, by mail, by telephone or other electronic means), and the solicitation results in the creation of a depository or direct debtor/creditor relationship with a resident of this Commonwealth. For purposes of this regulation, mere processing or transfer through financial intermediaries of checks, credit card receivables, commercial paper and the like does not create a debtor/creditor relationship. A financial institution is engaged in regular solicitation within this Commonwealth if it has entered into any of the relationships listed in this clause with twenty or more residents of this Commonwealth during any tax period or if it has five million dollars (\$5,000,000) or more of assets attributable to sources within this Commonwealth at any time during the tax period.
- (5) Such institution owns tangible property which is located here and which is leased to others for their use.

(6) Such institution owns or leases tangible property which is located here and which it uses in connection with its activities here.

**“Maintains an office.”** An institution maintains an office wherever it has established a regular, continuous and fixed place of business.

**“Mutual thrift institution” or “institution.”** Every:

- (1) savings bank without capital stock;
- (2) building and loan association;
- (3) savings and loan association; and
- (4) savings institution having capital stock;

whether the institution is incorporated under any law of this Commonwealth or under the law of the United States, or is incorporated under the law of any other jurisdiction and is located within this Commonwealth.

**“Origination of loans.”** A loan is deemed to have originated in the state in which the office is located which properly treats the loan as an asset on its books or records. However, if an institution maintains an office in a state, the following rules will apply:

(1) Loans secured primarily by real property are deemed to have originated at an office within the state in which the predominant part of the security real property is or will be located, if at least one of the following activities occurs at an office in the state:

- (i) Application for the loan.
- (ii) Negotiation for the loan.
- (iii) Approval of the loan.
- (iv) Administrative responsibility for the loan.

(2) *All other loans made to borrowers residing or having their commercial domicile within the state are deemed to have originated at an office within the state, if at least one of the following activities occurs at an office in the state:*

- (i) *Application for the loan.*
- (ii) *Negotiation for the loan.*
- (iii) *Approval of the loan.*
- (iv) *Administrative responsibility for the loan.*

*"Property located in a state."*

(1) *Except as otherwise provided in this definition, tangible property, including leased property, shall be deemed to be located in the state in which the property is physically situated.*

(2) *Tangible personal property which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment and the like, shall be deemed to be located in a state if:*

(i) *the operation of the property is entirely within the state, or the operation without the state is occasional or incidental to its operation within the state;*

(ii) *the operation of the property is in two or more states, but the principal base of operations from which the property is sent out is in the state; or*

(iii) *the state is the residence or commercial domicile of the lessee or other user of the property, where there is no principal base of operations and the operation of the property is in two or more states.*

*"Regular presence of employes." An employe shall be deemed to have a regular presence in a state if:*

(1) *a majority of the employe's service is performed within the state; or*

(2) *the office from which his activities are directed or controlled is located in the state, where a majority of the employe's service is not performed in any one state.*

*"State." Any of the several states 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.*

*"Taxable net income." The net income of an institution after apportionment and after any deduction for a net loss carryover.*

*"Taxable year." The taxable year which the institution, or any consolidated group with which the institution participates in the filing of consolidated returns, actually uses in reporting taxable income to the Federal Government. For purposes of this article, the terms "year," "annual year," "fiscal year," "annual or fiscal year," "tax year" and "tax period" shall be the same as the institution's taxable year, as defined in this paragraph.*

Section 3. Section 1502 of the act, amended or added December 1, 1983 (P.L.228, No.66), December 23, 1983 (P.L.360, No.89), July 1, 1985 (P.L.78, No.29) and July 13, 1987 (P.L.325, No.59), is amended to read:

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

(a) Every [mutual thrift] institution shall annually, [upon] by April 15 of each year beginning in the year 1984, make a report to the Department of Revenue, setting forth the entire amount of *taxable* net [earnings or] income

received or accrued by said **[mutual thrift]** institution from all sources during the preceding year, and such other information as the department may require, and upon such *taxable net [earnings or] income* the said **[mutual thrift]** institution shall pay into the State Treasury, through the Department of Revenue, for the use of the Commonwealth, a State excise tax at the rate of eleven and one-half per cent *for the calendar years 1983, 1984, 1985 and 1986 and fiscal years beginning in 1983, 1984, 1985 and 1986, at the rate of twenty per cent for calendar years 1987 and 1988 and fiscal years beginning in 1987 and 1988, at the rate of twelve and one-half per cent for calendar years 1989 through 1991 and fiscal years beginning in 1989 through 1991 and at the rate of eleven and one-half per cent for calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter* upon such annual *taxable net [earnings or] income*, for the privilege of doing business in the Commonwealth. Every **[mutual thrift]** institution shall be required to make payment of *estimated tax pursuant to the provisions of sections 3003.2, 3003.3 and 3003.4 of Article XXX for taxable years beginning after December 31, 1991. For taxable years beginning before January 1, 1992, every institution shall be required to make payment of tentative tax pursuant to the provisions of Article XXX.* The remaining portion of the tax due shall be paid at the time the report prescribed herein is required to be made.

(b) If, however, any such **[mutual thrift]** institution closes its fiscal year, not upon December 31 but upon some other date, the tax shall be imposed upon such **[annual] taxable net [earnings or] income** received or accrued during its fiscal year beginning in the year 1983 and during each fiscal year thereafter, and the annual report of *taxable net [earnings or] income* received or accrued during each fiscal year shall be made, and the remaining tax due thereon shall be paid within one hundred five days after the close of such fiscal year. Each such **[mutual thrift] institution shall be required to make payment of estimated tax pursuant to the provisions of sections 3003.2, 3003.3 and 3003.4 of Article XXX for taxable years beginning after December 31, 1991. For taxable years beginning before January 1, 1992, every institution shall be required to make payment of tentative tax pursuant to the provision of Article XXX.**

(c) Net **[earnings or] income** or net **[operating] loss** shall be determined in accordance with generally accepted *accounting principles [of accounting]*, except that:

(1) Net **[earnings or] income** or **[operating] net loss** shall be determined on a separate company unconsolidated basis, using cost in lieu of equity accounting for investments in a subsidiary.

(2) The accounting method may be on a cash, combined cash and accrual, or accrual basis, depending on the method of bookkeeping employed by the institution.

(3) In the case of a business combination *entered into after December 31, 1986, which is treated as a reorganization for purposes of section 368 of the Internal Revenue Code of 1986, or a similar successor provision, and accounted for under the purchase accounting method, net [earnings or]*

income or net **[operating]** loss shall be determined as though the acquisition had been accounted for under the pooling of interest method.

(4) Net **[earnings or]** income or net **[operating]** loss shall exclude amounts credited or paid as interest to holders of accounts or depositors or as dividends to shareholders, except that no deduction shall be permitted for dividends paid by an institution having capital stock to its stockholders with regard to their stock.

(5) *Net income or net loss shall exclude income or loss derived from obligations of the United States which, by Federal law, are exempt from local and state taxation and from obligations of the Commonwealth which, by Pennsylvania law, are exempt from taxation by the Commonwealth. For purposes of this article, United States obligations shall be obligations coming within the scope of 31 U.S.C. § 3124, and Commonwealth obligations shall be obligations of the Commonwealth, any public authority, commission, board or other agency created by the Commonwealth, any political subdivision of the Commonwealth or any public authority created by such political subdivision which, by Pennsylvania law, are exempt from taxation by the Commonwealth.*

(6) *No deduction shall be allowed for that portion of the institution's interest expense which is allocable to tax-exempt income derived from United States obligations and Commonwealth obligations. An institution's interest expense shall include amounts credited or paid as interest to holders of accounts or depositors or as dividends to shareholders except dividends paid by an institution having capital stock to its shareholders with regard to their stock. For purposes of this clause, the portion of the institution's interest expense which is allocable to tax-exempt income derived from United States obligations and Commonwealth obligations is an amount which bears the same ratio to such interest expense as the institution's interest income from United States obligations and Commonwealth obligations bears to the total interest income of the institution.*

(d) **[For the calendar year 1983 and fiscal years beginning in 1983 and thereafter, a net operating loss, as defined under subsection (c), shall be allowed as a deduction and can be carried forward three succeeding years. The net operating loss shall be carried to the earliest taxable year to which such loss may first be carried.] (1) In determining taxable net income, there shall be allowed a net loss carryover deduction as provided by this subsection.**

(2) *The net loss carryover deduction for a taxable year shall be that amount which is the sum of any net losses for the preceding three taxable years, beginning with the earliest year, to the extent that any such net loss has not previously been allowed as a deduction in a prior taxable year, except that the deduction shall not exceed the amount of the net income for the current year determined after apportionment.*

(3) *A net loss for a preceding taxable year shall be an amount determined as a negative amount for the year in accordance with subsection (c), after any apportionment applicable to the preceding year, except that, for taxable years beginning before 1987, any net loss shall be determined without regard to clause (6) of subsection (c).*

(e) **[Mutual thrift institutions]** *Institutions* subject to the provisions of this article shall be exempt from all other corporate taxes imposed by the Commonwealth for State purposes. Such institutions, any shares of stock in such institutions and the property of such institutions shall be exempt from all local taxation imposed by political subdivisions of this Commonwealth under the authority of the laws of this Commonwealth, except taxes on real estate or transfers thereof.

(e.1) In the case of a change in ownership by purchase, liquidation, acquisition of stock or reorganization of **[a mutual thrift]** *an* institution in the manner described in section 381 or 382 of the Internal Revenue Code of 1954, as amended, **[the]** *certain* 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. *The applicable limitations shall include all those limitations imposed solely on account of a change in ownership, including, but not limited to, sections 269, 318 (insofar as it defines the scope of section 382), 381 and 382. The carryover of tax losses shall not be limited by the Federal consolidated return regulations or section 338, providing for the deemed termination of corporate existence upon the making of certain elections for Federal income tax purposes.* 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.

(f) *If any institution shall neglect or refuse to make any report required by this article, such institution shall be liable to a penalty of five thousand dollars (\$5,000), which shall be settled in the same manner as the tax imposed by this article is settled.*

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

**Section 1502.1. Apportionment.**—(a) *Net income or net loss shall be apportioned in accordance with this section. An institution may apportion its net income or net loss if the institution is subject to tax in another state based on or measured by net worth, gross receipts, net income or some similar base of taxation, or if it could be subject to such a tax, whether or not such a tax has in fact been enacted.*

(b) *Income or loss shall be apportioned in accordance with a fraction, the numerator of which is the sum of the payroll factor, the receipts factor and the deposits factor, and the denominator of which is three.*

(c) *The payroll factor is a fraction, the numerator of which is the total wages paid in this State and the denominator of which is the total wages paid in all states. Wages are paid in a state if paid to an employe having a regular presence therein.*

(d) *The receipts factor is a fraction, the numerator of which is total receipts located in this State and the denominator of which is the total receipts located in all states. Receipts do not include principal repayments on*

*loans or credit, travel and entertainment cards. Receipts from sale or disposition of intangible and tangible property include only the net gain therefrom. The location of receipts shall be determined as follows:*

*(1) Receipts from loans are located at the place of origination.*

*(2) All receipts from performance of services are located in a state to the extent the services are performed in the state. If services are performed partly within two or more states, the receipts located in each state shall be measured by the ratio which the time spent in performing such services in the state bears to the total time spent in performing such services in all states. Time spent in performing services in a state is the time spent by employees having a regular presence in the state in performing such services.*

*(3) Receipts from lease transactions are located in the state in which the leased property is deemed located.*

*(4) Interest or service charges (excluding merchant discounts) from credit, travel and entertainment card receivables and credit card holders' fees are located in the state in which the credit card holder resides in the case of an individual or, if a corporation, in the state of the cardholder's commercial domicile if, in either case, the institution maintains an office in such state. Otherwise, the receipts are located in the state in which the institution maintains an office which treats such receivables as assets on its books or records.*

*(5) Interest, dividends and net gains from the sale or disposition of intangibles, exclusive of those receipts described elsewhere in this section, are located in the state in which the depository maintains an office which treats such intangibles as assets on its books or records.*

*(6) Fees or charges from the issuance of traveler's checks and money orders are located in the state in which such traveler's checks or money orders are issued.*

*(7) Receipts from sales of tangible property are located in the state in which the property is delivered or shipped to a purchaser, regardless of the f.o.b. point or other conditions of the sale.*

*(8) All receipts not specifically treated under this subsection are located in the state where the greatest portion of the income-producing activities are performed, based on costs of performance.*

*(e) The deposits factor is a fraction, the numerator of which is the average value of deposits located in this State during the taxable year and the denominator of which is the average value of total deposits during the taxable year. The average value of deposits is to be computed on a quarterly basis. The location of deposits shall be determined as follows:*

*(1) Deposits received from individuals are located in the state in which the individual resides, if the institution maintains an office in that state.*

*(2) Deposits received from a corporation are located in the state of the corporation's commercial domicile, if the institution maintains an office in that state.*

*(3) Deposits received from a state government, its political subdivisions, agencies and instrumentalities are located in such state, if the institution maintains an office in that state.*



**(4) In all other cases, deposits are located in the state in which the institution maintains an office which treats the deposits as liabilities on its books or records.**

**Section 1502.2. Credits.—(a) For taxable years beginning in 1987 through taxable years beginning in 1991, an institution may elect to take a credit for taxes based on or measured by income or taxes imposed in lieu thereof paid to other states against its tax liability determined under this article.**

**(b) The amount of the credit shall be determined as follows:**

**For each state in which the institution is subject to tax, the amount of the credit shall be the lesser of:**

**(1) the applicable tax actually paid to such state; or**

**(2) the total tax due under this article without regard to apportionment multiplied by a fraction the numerator of which is the amount of the institution's income (or other applicable basis of taxation) subject to tax by such state and the denominator of which is the amount of the institution's entire income (or other applicable basis of taxation) to which a system of apportionment or allocation is applied by such state; except that, if a state does not apply a system of allocation or apportionment, the numerator of such fraction is the amount of the institution's income (or other applicable basis of taxation) which would be subject to taxation in such state if the apportionment fraction were computed in accordance with the provisions of this article.**

**(c) If exercised, this election shall be in lieu of any other apportionment to which the institution would otherwise be entitled.**

**Section 1502.3. Additional Reporting Requirements.—(a) For the calendar years 1987, 1988, 1989, 1990 and 1991 and fiscal years beginning in 1987, 1988, 1989, 1990 and 1991, every institution shall report to the Department of Revenue upon a form prescribed, prepared and furnished by the Department of Revenue the information necessary to determine the income or loss that would otherwise be apportioned in accordance with this section:**

**(1) Income or loss shall be apportioned in accordance with a fraction, the numerator of which is the sum of the payroll factor and the receipts factor, and the denominator of which is two.**

**(2) The payroll factor is a fraction, the numerator of which is the total wages paid in this State and the denominator of which is the total wages paid in all states. Wages are paid in a state to the extent of the time spent by the employe in the state.**

**(3) The receipts factor is a fraction, the numerator of which is total receipts located in this State and the denominator of which is the total receipts located in all states. Receipts do not include principal repayments on loans or credit, travel and entertainment cards. Receipts from sale or disposition of intangible and tangible property include only the net gain therefrom. The location of receipts shall be determined as follows:**

**(i) Receipts from loans are located at the residence or commercial domicile of the debtor, except that receipts from loans secured by real or tangible personal property are located at the location of the property.**

(ii) *All receipts from performance of services are located in a state to the extent the services are performed in the state. If services are performed partly within two or more states, the receipts located in each state shall be measured by the ratio which the time spent in performing such services in the state bears to the total time spent in performing such services in all states.*

(iii) *Receipts from lease transactions are located in the state in which the leased property is deemed located.*

(iv) *Interest or service charges (excluding merchant discounts) from credit, travel and entertainment card receivables and credit card holders' fees are located in the state in which the credit card holder resides in the case of an individual or, if a corporation, in the state of the cardholder's commercial domicile. Otherwise, the receipts are located in the state in which the credit card holder receives billing notices.*

(v) *Interest, dividends and net gains from the sale or disposition of intangibles, exclusive of those receipts described elsewhere in this section, are located in the state in which the depository maintains an office which treats such intangibles as assets on its books or records.*

(vi) *Fees or charges from the issuance of traveler's checks and money orders are located in the state in which such traveler's checks or money orders are issued.*

(vii) *Receipts from sales of tangible property are located in the state in which the property is delivered or shipped to a purchaser, regardless of the f.o.b. point or other conditions of the sale.*

(4) *All receipts not specifically treated under clause (3) of this subsection are located in the state where the greatest portion of the income-producing activities are performed, based on costs of performance.*

(b) *Such reports shall set forth such other information as the Department of Revenue may require, including, but not limited to, information relative to the situs of its payroll and receipts.*

**Section 1502.4. Restrictions on Lawsuits.**—*No institution which is subject to the tax imposed by this article and which fails to file the annual report required by section 1502 shall be permitted to initiate any action in any court of this Commonwealth until the institution files with the Department of Revenue the required report. The failure of an institution to file the annual report required by section 1502 shall not impair the validity of any contract or act of the institution and shall not prevent the institution from defending any action in any court of this Commonwealth.*

**Section 1502.5. Sunset.**—*The provisions regarding apportionment, credits and additional filing requirements in accordance with sections 1502.1, 1502.2 and 1502.3 of this article shall not be applicable for calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter.*

**Section 1506. Measurement of Tax.**—(a) *The Department of Revenue shall ascertain the total amount of revenue, realized or unrealized, that was lost for all taxable years beginning before January 1, 1987, as a result of the decision of the Supreme Court of Pennsylvania in First Federal Savings and Loan Association of Philadelphia vs Commonwealth, 515 Pa. 369 (1987). In*

*ascertaining this amount, the department shall consider any refunds, including interest paid, granted to institutions as well as any reductions in settled or resettled taxes or other reductions which arose or are supported by the First Federal decision. The department shall also ascertain the difference in the revenue produced by the tax imposed by this article for taxable years beginning in 1987 and 1988 at the rate of twenty per cent and the revenue which would have been received if the tax rate was set at twelve and one-half per cent for such taxable years. After such information has been compiled and determined, the department shall reduce the rate of the tax imposed by this article for taxable years beginning in 1987 and 1988 to the nearest one-tenth of a per cent in order that the revenue resulting from the rate of tax in excess of twelve and one-half per cent equals the foregone tax revenues due to the First Federal decision as ascertained pursuant to this section. If such adjustment is made, the department shall reduce and recalculate the tax of each institution for taxable years beginning in 1987 and 1988 and shall notify each institution of its reduced tax liability. Each institution shall then be entitled to apply for a cash refund or credit in the manner provided by law, except that no interest shall accrue on the refund or credit granted pursuant to this subsection.*

*(b) The department shall also submit to the General Assembly the information required to be ascertained by subsection (a) of this section.*

Section 5. Section 1708 of the act, added July 1, 1985 (P.L.78, No.29), is amended by adding a subsection to read:

Section 1708. Utilization of Credits.—\*\*\*

*(d) Credits awarded pursuant to this article may be awarded to a wholly-owned subsidiary of the taxpayer, subject to the approval of the Board of the Ben Franklin Partnership Fund and to the same requirements imposed on the taxpayer by this article, if the wholly-owned subsidiary was created for the purpose of a corporate transfer described in section 351 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 351).*

Section 6. Sections 1711 and 1714 of the act, added July 1, 1985 (P.L.78, No.29), are amended to read:

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

Section 7. Section 3003(b), (b.3), (c) and (d.1) of the act, amended or added July 1, 1985 (P.L.78, No.29) and July 13, 1987 (P.L.317, No.58), are amended 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; *except that corporations shall not be required to report or pay tentative tax with respect to the capital stock and franchise tax on account of any taxable year commencing with calendar year 1988 and each taxable year thereafter; except that the tentative tax with respect to the mutual thrift institution's tax for calendar year 1988 and fiscal years beginning in 1988 shall be computed by applying the current tax rate to ninety per cent of the tax base from the immediate prior year; and except that the mutual thrift institution shall not be required to report or pay tentative tax with respect to the mutual thrift institution's tax on account of any taxable year commencing with tax year 1992 and any taxable year thereafter.*

The tax imposed on shares of 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.3) Notwithstanding the provisions of subsections (a), (b), (b.1) and (b.2), the tentative tax due with respect to the capital stock and franchise tax for taxable years commencing during calendar year 1988, and for each taxable year thereafter, 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.]**

(c) Payment of taxes imposed by Articles IV, **[VI,]** IX, XI and XV of this act may at the taxpayer's election be an amount estimated by the taxpayer which estimated amount shall not be less than ninety per cent of the tax as is finally reported in the annual tax report for the current calendar or fiscal year.

\* \* \*

**[(d.1) A corporation with respect to the capital stock and franchise tax imposed by Article VI 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 (b.3) of this section or as computed on the basis estimated by the taxpayer to be due for the current year which esti-**

mated 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
1988	44%	44%	6%	6%
1989	34%	34%	16%	16%
1990	29%	29%	21%	21%
1991 and thereafter	25%	25%	25%	25%

Any taxpayer which has elected to compute its tentative tax liability on the aforesaid estimated basis and which has elected to report and pay the estimated tax in installments may, when reporting and paying its third or fourth installment, base the installment on an amended tentative tax report reflecting the taxpayer's new estimate of its tax liability for the tax year: Provided, That the new estimate reflects a lower tax liability than was previously reported in its original or, if applicable, amended tentative tax report. If an amended tentative tax report is filed, each remaining installment payment due, if any, shall be such as to bring the total installment payments made on account of the tax due for the current taxable year up to an amount determined by multiplying the tentative tax due for the year as reported in the amended report by the sum of the percentages set forth in the above schedule for the applicable elapsed installments.

The remaining portion of the tax due, if any, shall be paid upon the date the taxpayer's annual report is required to be filed under the applicable tax statute, determined without reference to any extension of time for filing such report.]

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Section 8. Sections 3003.2 and 3003.3 of the act, added July 1, 1985 (P.L.78, No.29), are amended to read:

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.] *The following taxpayers are required to pay estimated tax:*

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

(2) *Every corporation subject to the capital stock and franchise tax imposed by Article VI of this act, commencing with the calendar year 1988 and fiscal years beginning during the calendar year 1988 and each taxable*

*year thereafter, shall make payments of estimated capital stock and franchise tax during its taxable year as provided herein.*

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

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

(1) "Estimated tax." *Estimated corporate net income tax or estimated capital stock and franchise tax or estimated mutual thrift institution tax.*

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

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

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

(5) "Taxpayer." *A corporation required to pay a tax under Article IV or VI of this act or an institution required to pay a tax under Article XV of this act.*

(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.] *Estimated tax shall be paid as follows:*

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

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

Year In Which Tax Year Begins	First	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
1988	44%	44%	6%	6%
1989	34%	34%	16%	16%

1990	29%	29%	21%	21%
1991 and thereafter	25%	25%	25%	25%

*The remaining portion of the capital stock and franchise tax due, if any, shall be paid upon the date the corporation's annual report is required to be filed without reference to any extension of time for filing such report.*

(3) *Beginning in calendar year 1992 and each calendar year thereafter and fiscal years beginning in 1992 and each fiscal year thereafter, payment of the estimated mutual thrift institution 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 mutual thrift institution tax due, if any, shall be paid upon the date the institution's annual report is required to be filed without reference to any extension of time for filing such report.*

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

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

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

(g) *For all purposes of sections 3003.2 through 3003.4 of this article, estimated corporate net income tax and estimated capital stock and franchise tax shall be separately reported, determined and treated.*

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] taxpayer, 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] taxpayer, 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] taxpayer**.

(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] taxpayer** for, and the law applicable to, the second preceding taxable year, if a report showing a liability for tax was filed by the **[corporation] taxpayer** 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] taxpayer**. 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 resettled tax in the application of the provisions of this subsection shall not be imposed if, within forty-five days of the mailing date of such settlement or resettlement, payments are made such that the total amount of all payments of estimated tax equals or exceeds the amount



which would have been required to be paid on or before such date if the estimated tax were an amount equal to such settled or resettled tax adjusted to reflect the current tax rate. In any case in which the taxable year for which an underpayment of estimated tax may exist is a short taxable year, in determining the tax shown on the report or the settled or resettled tax for the second preceding taxable 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 9. Every institution shall, within 120 days of the effective date of this act or at the time the report prescribed herein is required to be made, whichever is later, make an amended report for the taxable year beginning in 1987 and pay such additional tax as may be due in accordance with the provisions of Article XV of the act, as amended by this act, upon a form prescribed, prepared and furnished by the Department of Revenue.

Section 10. Every institution shall, within 120 days of the effective date of this act or at the time the payment prescribed herein is required to be made, whichever is later, make payment of the additional tentative tax as may be due for the calendar year 1988 and the fiscal year beginning in 1988 in accordance with the provisions of Article XXX of the act.

Section 11. If any provision of this act or the application thereof to any taxpayer or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 12. (a) The provisions of sections 2, 3, 4, 7, 8, 9, 10 and 11 of this act, insofar as they apply to "mutual thrift institutions" or "institutions," shall be retroactive to calendar year 1987 and to fiscal years beginning in 1987 and to each taxable year thereafter.

(b) The provisions of sections 5 and 6 shall apply to expenditures made after December 31, 1987.

(c) The provisions of sections 1, 7 and 8 shall apply to the taxable years beginning after December 31, 1987.

Section 13. This act shall take effect immediately.

APPROVED—The 14th day of October, A. D. 1988.

ROBERT P. CASEY