

No. 2012-85

AN ACT

HB 761

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in sales and use tax, further providing for definitions, for exclusions from tax, for time for filing returns, for time of payment, for assessment and for collection of tax; in personal income tax, further providing for returns of married individuals, deceased or disabled individuals and fiduciaries, for requirements concerning returns, notices, records and statements, for assessment and for additions, penalties and fees; in corporate net income tax, further providing for definitions, for extension of time to file reports, for changes made by Federal Government and for assessments; in insurance premiums tax, further providing for definitions and for imposition of tax; in realty transfer tax, further providing for definitions, for excluded transactions, for documents relating to associations or corporations and members, partners, stockholders or shareholders thereof, for acquired company and for assessment and notice of tax and review; in cigarette tax, further providing for definitions; in research and development tax credit, further providing for limitation on credits and for termination; in film production tax credit, further providing for definitions, for credit for qualified film production expenses, for carrying and assigning credits and for limitations; in educational improvement tax credit, further providing for definitions, for qualification and application, for tax credit and for limitations; providing for a resource manufacturing tax credit, for an educational opportunity scholarship program, for a rehabilitation of historic structures tax credit and a community-based services tax credit; in tax credit for new jobs, further providing for definitions, for application process and for tax credit; in neighborhood assistance tax credit, further providing for definitions and for tax credit; in malt beverage tax, further providing for assessment by department; in inheritance tax, further providing for definitions and for transfers not subject to tax; in procedure and administration, further providing for petition for reassessment and for petition procedure and providing for compromise by secretary; in general provisions, further providing for petitions for refunds and providing for administrative bank attachment for accounts of obligors to the Commonwealth; making related repeals; abrogating a regulation; and providing for applicability.

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

Section 1. Section 201(d) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 7, 1997 (P.L.85, No.7), April 23, 1998 (P.L.239, No.45), May 12, 1999 (P.L.26, No.4), May 24, 2000 (P.L.106, No.23), June 22, 2001 (P.L.353, No.23) and December 23, 2003 (P.L.250, No.46), is amended to read:

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

* * *

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

(1) The filtering or heating of honey, the cooking, baking or freezing of fruits, vegetables, mushrooms, fish, seafood, meats, poultry or bakery products, when the person engaged in such business packages such property in sealed containers for wholesale distribution.

(1.1) The processing of fruits or vegetables by cleaning, cutting, coring, peeling or chopping and treating to preserve, sterilize or purify and substantially extend the useful shelf life of the fruits or vegetables, when the person engaged in such activity packages such property in sealed containers for wholesale distribution.

(2) The scouring, carbonizing, cording, combing, throwing, twisting or winding of natural or synthetic fibers, or the spinning, bleaching, dyeing, printing or finishing of yarns or fabrics, when such activities are performed prior to sale to the ultimate consumer.

(3) The electroplating, galvanizing, enameling, anodizing, coloring, finishing, impregnating or heat treating of metals or plastics for sale or in the process of manufacturing.

(3.1) The blanking, shearing, leveling, slitting or burning of metals for sale to or use by a manufacturer or processor.

(4) The rolling, drawing or extruding of ferrous and non-ferrous metals.

(5) The fabrication for sale of ornamental or structural metal or of metal stairs, staircases, gratings, fire escapes or railings (not including fabrication work done at the construction site).

(6) The preparation of animal feed or poultry feed for sale.

(7) The production, processing and bottling of non-alcoholic beverages for wholesale distribution.

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

(9) The milling for sale of flour or meal from grains.

(9.1) The aging, stripping, conditioning, crushing and blending of tobacco leaves for use as cigar filler or as components of smokeless tobacco products for sale to manufacturers of tobacco products.

(10) The slaughtering and dressing of animals for meat to be sold or to be used in preparing meat products for sale, and the preparation of meat products including lard, tallow, grease, cooking and inedible oils for wholesale distribution.

(11) The processing of used lubricating oils.

(12) The broadcasting of radio and television programs of licensed commercial or educational stations.

(13) The cooking or baking of bread, pastries, cakes, cookies, muffins and donuts when the person engaged in such activity sells such items at retail at locations that do not constitute an establishment from which ready-to-eat

food and beverages are sold. For purposes of this clause, a bakery, a pastry shop and a donut shop shall not be considered an establishment from which ready-to-eat food and beverages are sold.

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

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

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

(17) The producing of mobile telecommunications services.

(18) *The collection, washing, sorting, inspecting and packaging of eggs.*

* * *

Section 1.1. Section 204(10), (13) and (57) of the act, amended April 23, 1998 (P.L.239, No.45) and May 12, 1999 (P.L.26, No.4) and repealed in part December 20, 2000 (P.L.841, No.119), are amended to read:

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

* * *

(10) The sale at retail to or use by (i) any charitable organization, volunteer firemen's organization, ***volunteer firefighters' relief association as defined in 35 Pa.C.S. § 7412 (relating to definitions)*** or nonprofit educational institution, or (ii) a religious organization for religious purposes of tangible personal property or services other than pursuant to a construction contract: Provided, however, That the exclusion of this clause shall not apply with respect to any tangible personal property or services used in any unrelated trade or business carried on by such organization or institution or with respect to any materials, supplies and equipment used and transferred to such organization or institution in the construction, reconstruction, remodeling, renovation, repairs and maintenance of any real estate structure, other than building machinery and equipment, except materials and supplies when purchased by such organizations or institutions for routine maintenance and repairs. ***If the department has issued sales tax-exempt status to a volunteer firefighters' organization or a volunteer firefighters' relief association, the sales tax-exempt status may not expire unless the activities of the organization or association change so that the organization or association does not qualify as an institution of purely public charity in which case the organization or association shall immediately notify the department of the change. If the department ascertains that an organization or association no longer qualifies as an institution of purely public charity, the department may revoke the sales tax-exempt status of the organization or association.***

* * *

(13) The sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, nonreturnable containers and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by section 202, ***unless the property wrapped or packaged will be resold by the purchaser of the wrapping or packaging service.***

* * *

(57) The sale at retail to or use by a construction contractor of building machinery and equipment and services thereto that are:

(i) transferred pursuant to a construction contract for any charitable organization, volunteer firemen's organization, *volunteer firefighters' relief association*, nonprofit educational institution or religious organization for religious purposes, provided that the building machinery and equipment and services thereto are not used in any unrelated trade or business; *or*

(ii) transferred to the United States or the Commonwealth or its instrumentalities or political subdivisions; *or*].

* * *

Section 1.2. Sections 217 and 222 of the act, amended October 9, 2009 (P.L.451, No.48), are amended to read:

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

(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~~] *actual* tax [~~reported, or in the event no report is filed, the total tax which should have been reported,~~] *liability* for the third calendar quarter of the preceding year equals or exceeds six hundred dollars (\$600) and is less than twenty-five thousand dollars (\$25,000). Such returns shall be filed on or before the twentieth day of the next succeeding month with respect to which the return is made. Any licensee required to file monthly returns hereunder shall be relieved from filing quarterly returns.

(3) [~~After May 31, 2011, a return shall be filed semi-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 twenty-five thousand dollars (\$25,000). For the period from the first day of the month to the fifteenth day of the month, the returns shall be filed on or before the twenty-fifth day of the month. For the period from the sixteenth day of the month to the last day of the month, the returns shall be filed on or before the tenth day of the next succeeding month with respect to which the return is made. Any licensee required to file semi-monthly returns under this section shall be relieved from filing monthly or quarterly returns.~~] *With respect to every licensee whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds twenty-five thousand dollars (\$25,000) and is less than one hundred thousand dollars (\$100,000), the licensee shall, on or before the twentieth day of each month, file a single return consisting of all of the following:*

(i) *Either of the following:*

(A) *An amount equal to fifty per centum of the licensee's actual tax liability for the same month in the preceding calendar year if the licensee was a monthly filer or, if the licensee was a quarterly or semi-annual filer, fifty per centum of the licensee's average actual tax liability for that tax period in the preceding calendar year. The average actual tax liability shall*

be the actual tax liability for the tax period divided by the number of months in that tax period. For licensees that were not in business during the same month in the preceding calendar year or were in business for only a portion of that month, fifty per centum of the average actual tax liability for each tax period the licensee has been in business. If the licensee is filing a tax liability for the first time with no preceding tax periods, the amount shall be zero.

(B) An amount equal to or greater than fifty per centum of the licensee's actual tax liability for the same month.

(ii) An amount equal to the taxes due for the preceding month, less any amounts paid in the preceding month as required by subclause (i).

(4) With respect to each month by every licensee whose actual tax liability for the third calendar quarter of the preceding year equals or exceeds one hundred thousand dollars (\$100,000), the licensee shall, on or before the twentieth day of each month, file a single return consisting of the amounts under clause (3)(i)(A) and (ii).

(5) The amount due under clause (3)(i) or (4) shall be due the same day as the remainder of the preceding month's tax.

(6) The department shall determine whether the amounts reported under clause (3) or (4) shall be remitted as one combined payment or as two separate payments.

(7) The department may require the filing of the returns and the payments for these types of filers by electronic means approved by the department.

(8) Any licensee filing returns under clause (3) or (4) shall be relieved of filing quarterly returns.

(9) If a licensee required to remit payments under clause (3) or (4) fails to make a timely payment or makes a payment which is less than the required amount, the department may, in addition to any applicable penalties, impose an additional penalty equal to five per centum of the amount due under clause (3) or (4) which was not timely paid. The penalty under this clause shall be determined when the tax return is filed for the tax period.

(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 222. Time of Payment.—(a) Monthly[, **Semi-monthly**] and Quarterly Payments. The tax imposed by this article and incurred or collected by a licensee shall be due and payable by the licensee on the day the return is required to be filed under the provisions of section 217 and such payment must accompany the return [**for such preceding period**].

(b) Annual Payments. If the amount of tax due for the preceding year as shown by the annual return of any taxpayer is greater than the amount already paid by him in connection with his monthly[, **semi-monthly**] or quarterly returns he shall send with such annual return a remittance for the unpaid amount of tax for the year.

(c) Other Payments. Any person other than a licensee liable to pay any tax under this article shall remit the tax at the time of filing the return required by this article.

Section 1.3. Section 230 of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

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

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

Section 1.4. Section 237(c) of the act, amended July 1, 1985 (P.L.78, No.29), 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 purchased or which is provided to the vendor by a charitable, religious, educational, **volunteer firefighters' relief association** 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 2. Section 331(e) of the act, repealed and added August 31, 1971 (P.L.362, No.93), is amended and the section is amended by adding subsections to read:

Section 331. Returns of Married Individuals, Deceased or Disabled Individuals and Fiduciaries.—* * *

(e) **[The] *Except as provided under subsections (e.1) and (e.2), the final*** return for any deceased individual shall be made, ***signed*** and filed by his executor, administrator, or other **[person] *personal representative*** charged with his property.

(e.1) (1) During the year in which a spouse dies, a surviving spouse may file his or her return for the year jointly with the final return of his or her deceased spouse if the joint return could have been filed if both spouses were living for the entire taxable year. If a personal representative, executor or administrator or other fiduciary is appointed on behalf of the deceased spouse before the deceased spouse's tax return is filed, the surviving spouse may not file a joint return without the consent of the fiduciary. If a joint return is filed, both the fiduciary of the deceased spouse's estate and the surviving spouse must sign the joint return.

(2) A surviving spouse may make, sign and file the final tax return of his or her deceased spouse if the deceased spouse did not previously file a return for that taxable year and if a personal representative, executor or administrator has not been appointed by the time the return is made, signed and filed. If the surviving spouse properly files a final return for the deceased spouse under this paragraph, a fiduciary who is later appointed for the deceased spouse may supersede the final return filed by the surviving spouse by filing a separate return for the deceased spouse. Any joint return improperly filed by the surviving spouse or superseded by the fiduciary shall be treated as void. If the surviving spouse files his or her own tax return jointly with the deceased spouse's return under this paragraph and the return is superseded by the filing of a return by the deceased spouse's fiduciary, the surviving spouse shall be required to file a separate return within 90 days of the filing of the fiduciary's return. The surviving spouse's separate return shall be deemed to be filed:

- (i) on the day the joint return was filed if it is filed within such time; or***
- (ii) the date the department receives it.***

(e.2) If both taxpayers die during the same tax year, a final return for each deceased spouse may be jointly filed if a joint return could have been filed had both spouses lived for the entire taxable year and with the consent of the personal representatives, executors or administrators of both deceased spouses under subsection (e.1) by the due date, including extensions, of the joint tax return. Both fiduciaries must sign the joint return.

* * *

Section 2.1. Section 335 of the act is amended by adding a subsection to read:

Section 335. Requirements Concerning Returns, Notices, Records and Statements.—* * *

(f) The following apply:

(1) Any person who:

(i) makes payments of income from sources within this Commonwealth;

(ii) makes payments of nonemployee compensation or payments under an oil and gas lease under subparagraph (i) to a resident or nonresident individual, an entity treated as a partnership for tax purposes or a single member limited liability company; and

(iii) is required to make a form 1099-MISC return to the Secretary of the Treasury of the United States with respect to the payments shall file a copy of form 1099-MISC with the department and send a copy of form 1099-MISC to the payee by the Federal filing deadline each year.

(2) If the payor is required to perform electronic filing for Pennsylvania employer withholding purposes, the form 1099-MISC shall be filed electronically with the department.

Section 3. Section 338 of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

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

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

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

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

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

Section 4. Section 352(d)(2) and (f) of the act, amended August 4, 1991 (P.L.97, No.22) and July 7, 2005 (P.L.149, No.40), are amended to read:

Section 352. Additions, Penalties and Fees.—* * *

(d) * * *

(2) No addition to tax shall 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 lesser of:

(A) 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 *after consideration of the special tax provisions for poverty*, at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on his return for, and the law applicable to, the preceding taxable year; or

(B) An amount equal to ninety per cent of the tax computed, at the rates applicable to the taxable year, on the basis of the actual income for the months in the taxable year ending before the month in which the installment is required to be paid, or, in the case of a trust or estate, an amount equal to ninety per cent of the applicable percentage of the tax for the taxable year as determined pursuant to section 6654(d)(2)(C)(ii) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 6654), as amended, at rates applicable to the taxable year, computed on an annualized basis in accordance with United States Treasury regulations, based upon the actual income for the months of the taxable year ending with the last day of the second preceding month prior to the month in which the installment is required to be paid.

* * *

(f) (1) Any person required under the provisions of section 317 to furnish a statement to an employe who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement in the manner, at the time, and showing the information required under section 317 and the regulations prescribed thereunder, shall, for each such failure, be subject to a penalty of fifty dollars (\$50) for each employe.

(2) Any person required by regulation to furnish an information return who furnishes a false or fraudulent return shall for each failure be subject to a penalty of two hundred fifty dollars (\$250).

(3) Every Pennsylvania S corporation required to file a return with the department under the provisions of section 330.1 who furnishes a false or fraudulent return or who fails to file the return in the manner and at the time required under section 330.1 shall be subject to a penalty of \$250 for each failure.

(4) Any person required to file a copy of form 1099-MISC with the department under the provisions of section 335(f) who wilfully furnishes a false or fraudulent form or who wilfully fails to file the form in the manner, at the time and showing the information required under section 335(f) shall, for each such failure, be subject to a penalty of fifty dollars (\$50).

(5) Any person required under the provisions of section 335(f) to furnish a copy of form 1099-MISC to a payee who wilfully furnishes a false or fraudulent form or who wilfully fails to furnish a form in the manner, at the time and showing the information required by section 335(f) shall, for each such failure, be subject to a penalty of fifty dollars (\$50).

* * *

Section 4.1. Section 401(3)2(a)(9)(A) of the act, amended October 9, 2009 (P.L.451, No.48), is amended to read:

Section 401. Definitions.—The following words, terms, and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

(3) "Taxable income." * * *

2. In case the entire business of any corporation, other than a corporation engaged in doing business as a regulated investment company as defined by the Internal Revenue Code of 1986, is not transacted within this

Commonwealth, the tax imposed by this article shall be based upon such portion of the taxable income of such corporation for the fiscal or calendar year, as defined in subclause 1 hereof, and may be determined as follows:

(a) Division of Income.

* * *

(9) (A) Except as provided in subparagraph (B):

(i) For taxable years beginning before January 1, 2007, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus three times the sales factor and the denominator of which is five.

(ii) For taxable years beginning after December 31, 2006, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of fifteen times the property factor, fifteen times the payroll factor and seventy times the sales factor and the denominator of which is one hundred.

(iii) For taxable years beginning after December 31, 2008, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of eight and a half times the property factor, eight and a half times the payroll factor and eighty-three times the sales factor and the denominator of which is one hundred.

(iv) For taxable years beginning after December 31, 2009, all business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the sum of five times the property factor, five times the payroll factor and ninety times the sales factor and the denominator of which is one hundred.

(v) For taxable years beginning after December 31, 2012, all business income shall be apportioned to this State by multiplying the income by the sales factor.

* * *

Section 5. Section 405 of the act is amended to read:

Section 405. Extension of Time to File Reports.—The department may, upon application made to it, in such form as it shall prescribe, on or prior to the last day for filing any annual report, and upon proper cause shown, grant to the corporation, required to file such report, an extension of not more than sixty days within which such report may be filed, **and in case the Federal income tax authorities at any time grant a longer extension of time for filing such reports with the Federal Government, the department may grant an additional extension of time for filing the annual report under this article of not more than].** *If the Federal income tax authorities grant an extension of time for filing the reports with the Federal Government, the department shall automatically grant an extension of time for filing the annual report under this article of thirty days after the termination of the Federal extension, but the amount of tax due shall, in such cases, nevertheless, be subject to interest from the due dates and at the rates fixed by this article.*

Section 6. Section 406 of the act, amended October 18, 2006 (P.L.1149, No.119), is amended to read:

Section 406. Changes Made by Federal Government.—(a) If the amount of the taxable income, as returned by any corporation to the Federal Government, is finally changed or corrected by the Commission of Internal

Revenue or by any other agency or court of the United States, such corporation, within [thirty days] *six months* after the receipt of such final change or correction, shall make a report of change, under oath or affirmation, to the department showing such finally changed or corrected taxable income, upon which the tax is required to be paid to the United States. In case a corporation fails to file a report of change, which results in an increase in taxable income within the time prescribed, there shall be added to the tax, a penalty of five dollars (\$5) for every day during which such corporation is in default, but the department may abate any such penalty in whole or in part.

(b) If, as a result of such final change or correction, a corporation should report any change in the amount of the taxable income of any corporation upon which tax is imposed by this article, the department shall adjust the corporation's tax on the department's records to conform to the revised tax as reported and shall credit the taxpayer's account to the extent of any overpayment resulting from the adjustment. The department shall then have the power, and its duty shall be, to determine and assess the taxpayer's unpaid and unreported liability for tax, interest or penalty due the Commonwealth, or to credit the taxpayer's account.

(c) Where a report of change, of Federal income, or Federal tax, has been filed after an administrative or judicial appeal has been taken, the report shall be deemed a part of the original annual report upon petition of the taxpayer at any subsequent proceeding as though it had been filed with the original report, and no separate appeal from an assessment resulting from the report of change, correction, or redetermination shall be necessary to the extent the identical issues for the taxable year have been raised in the appeal.

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

(e) The provisions of this section shall apply to every corporation which was doing business in Pennsylvania in the year for which the Federal income has been changed, irrespective of whether or not such corporation has thereafter merged, consolidated, withdrawn or dissolved. Any clearance certificate issued by the department shall be conditioned upon the requirement that in the event of a change in Federal income for any year for which taxes have been paid to the Commonwealth, the corporation or its successor or its officers or its directors shall file with the department a report of change and pay any additional State tax resulting therefrom.

Section 6.1. Section 407.1 of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

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

(b) A notice of assessment and demand for payment shall be mailed to the taxpayer. The notice shall set forth the basis of the assessment. The assessment shall be paid to the department upon receipt of the notice of

assessment. Payment of the assessment shall be without prejudice to the right of the taxpayer to file a petition for reassessment in the manner prescribed by Article XXVII.

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

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

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

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

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

Section 7. Section 901 introductory paragraph of the act, amended December 1, 1983 (P.L.228, No.66), is amended to read:

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

* * *

Section 8. Section 902(b) and (c) of the act, amended June 30, 1995 (P.L.139, No.21), are amended to read:

Section 902. * * *

(b) Disposition of Taxes.—The taxes paid by foreign fire insurance companies under this **[act] article** shall continue to be distributed and used for firemen's relief pension or retirement purposes, as provided by section two of the act, approved the twenty-eighth day of June, one thousand eight hundred ninety-five (Pamphlet Laws 408), as amended; and the taxes paid by foreign casualty insurance companies under this **[act] article** shall continue to be distributed and used for police pension, retirement or disability purposes as provided by the act, approved the twelfth day of May, one thousand nine hundred forty-three (Pamphlet Laws 259), as amended.

(c) Other Taxes.—All other taxes received under this **[act] article** shall be credited to the General Fund for general revenue purposes.

Section 9. The definitions of "association," "family farm corporation" and "family farm partnership" in section 1101-C of the act, amended July 2, 1986 (P.L.318, No.77) and April 23, 1998 (P.L.239, No.45), are amended and the section is amended by adding a definition to read:

Section 1101-C. Definitions.—The following words when used in this article shall have the meanings ascribed to them in this section:

"Association." A *general* partnership, limited partnership, *limited liability partnership* or any other form of unincorporated enterprise, owned or conducted by two or more persons other than a private trust or decedent's estate.

* * *

["Family farm corporation." A corporation of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of each class of stock of the corporation is continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

- (1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;**
- (2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;**
- (3) fur farming;**
- (4) stockyard and slaughterhouse operations; or**
- (5) Manufacturing or processing operations of any kind.**

"Family farm partnership." A partnership of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of the interests in the partnership are continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

- (1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;**
- (2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;**
- (3) fur farming;**
- (4) stockyard and slaughterhouse operations; or**
- (5) manufacturing or processing operations of any kind.]**

"Family farm business." A corporation or association of which at least seventy-five per cent of its assets are devoted to the business of agriculture and at least seventy-five per cent of each class of stock of the corporation or the interests in the association is continuously owned by members of the same family. The business of agriculture shall include the leasing to members of the same family or the leasing to a corporation or association owned by members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

- (1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;**
- (2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;**
- (3) fur farming;**

- (4) stockyard and slaughterhouse operations; or**
(5) manufacturing or processing operations of any kind.

* * *

Section 10. Section 1102-C.3(6), (19), (19.1) and (20) of the act, amended or added July 2, 1986 (P.L.318, No.77) and June 16, 1994 (P.L.279, No.48), are amended to read:

Section 1102-C.3. Excluded Transactions.—The tax imposed by section 1102-C shall not be imposed upon:

* * *

(6) A transfer between husband and wife, between persons who were previously husband and wife who have since been divorced, provided the property or interest therein subject to such transfer was acquired by the husband and wife or husband or wife prior to the granting of the final decree in divorce, between parent and child or the spouse of such child, ***between a stepparent and a stepchild or the spouse of the stepchild***, between brother or sister or spouse of a brother or sister and brother or sister or the spouse of a brother or sister and between a grandparent and grandchild or the spouse of such grandchild, except that a subsequent transfer by the grantee within one year shall be subject to tax as if the grantor were making such transfer.

* * *

(19) A transfer of real estate devoted to the business of agriculture to a family farm **[corporation] business** by:

(i) a member of the same family which directly owns at least seventy-five per cent of each class of the stock thereof ***or the interests in that family farm business; or***

(ii) ***a family farm business, which family directly owns at least seventy-five per cent of each class of stock thereof or the interests in that family farm business.***

[(19.1) A transfer of real estate devoted to the business of agriculture to a family farm partnership by a member of the same family, which family directly owns at least seventy-five per cent of the interests in the partnership.]

(20) A transfer between members of the same family of an ownership interest in a real estate company[,] ***or family farm [corporation or family farm partnership which] business that*** owns real estate.

* * *

Section 11. Section 1102-C.4 of the act, added July 2, 1986 (P.L.318, No.77), is amended to read:

Section 1102-C.4. Documents Relating to Associations or Corporations and Members, Partners, Stockholders or Shareholders Thereof.—Except as otherwise provided in **[section] sections** 1102-C.3 **and 1102-C.5**, documents which make, confirm or evidence any transfer or devise of title to real estate between associations or corporations and the members, partners, shareholders or stockholders thereof are fully taxable. For the purposes of this article, corporations and associations are entities separate from their members, partners, stockholders or shareholders.

Section 12. Section 1102-C.5 of the act, amended or added July 2, 1986 (P.L.318, No.77) and June 16, 1994 (P.L.279, No.48), is amended to read:

Section 1102-C.5. Acquired Company.—(a) A real estate company is an acquired company upon a change in the ownership interest in the company, however effected, if the change:

(1) does not affect the continuity of the company; and

(2) of itself or together with prior changes has the effect of transferring, directly or indirectly, ninety per cent or more of the total ownership interest in the company within a period of three years.

(3) For the purposes of paragraph (2), a transfer occurs within a period of three years of another transfer or transfers if, during the period:

(i) the transferring party provides a legally binding commitment, enforceable at a future date, to execute the transfer;

(ii) the terms of the transfer are fixed and not subject to negotiation; and

(iii) the transferring party receives full consideration, in any form, in exchange for the transfer.

[(b) With respect to real estate acquired after February 16, 1986, a family farm corporation is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm corporation or when, because of issuance or transfer of stock or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm corporation under this act.

(b.1) A family farm partnership is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm partnership or when, because of transfer of partnership interests or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm partnership under this act.]

(b.2) A family farm business is an acquired company when, because of voluntary or involuntary dissolution, it ceases to be a family farm business or when, because of the issuance or transfer of stock in the corporation or transfer of interests in the association or because of acquisition or transfer of assets that are devoted to the business of agriculture, it fails to meet the minimum requirements of a family farm business under this article.

(b.3) The conveyance of assets held by one family farm business to another family farm business shall not be considered a transfer of assets under this article if the same individuals hold at least fifty per cent of the ownership interest in each family farm business.

(c) Within thirty days after becoming an acquired company, the company shall present a declaration of acquisition with the recorder of each county in which it holds real estate for the affixation of documentary stamps and recording. Such declaration shall set forth the value of real estate holdings of the acquired company in such county.

Section 12.1. Section 1111-C of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

Section 1111-C. Assessment and Notice of Tax; Review.—(a) If any person shall fail to pay any tax imposed by this article for which he is liable, the department is hereby authorized and empowered to make an assessment of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such

assessments shall be made within three years after the date of the recording of the document, subject to the following:

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

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

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

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

Section 12.2. The definition of "wholesaler" in section 1201 of the act, added October 9, 2009 (P.L.451, No.48), is amended to read:

Section 1201. Definitions.—As used in this article:

* * *

"Wholesaler." Any of the following:

(1) Any person that meets all of the following:

(i) In the usual course of business, purchases cigarettes from a cigarette stamping agent or other wholesaler and receives, stores, sells and distributes within this Commonwealth at least seventy-five per cent of the cigarettes purchased by him or her to retail dealers or wholesale dealers or any combination who buys the cigarettes from him or her for the purpose of resale to the ultimate consumer.

(ii) Maintains an established place of business for the receiving, storage and distribution of cigarettes.

(2) Any person that meets all of the following:

(i) Is engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing the cigarette vending machines, owned or leased by him, in various outlets within this Commonwealth.

(ii) Pays to the owner or lessee of the premises a commission or rental for the use of the premises.

(iii) Operates at least ten vending machines.

(iv) Meets all the other requirements for licensing of wholesalers under Article II-A of the act of April 9, 1929 (P.L.343, No.176), known as "The Fiscal Code," including maintaining an established place of business for the receiving, storage and distribution of cigarettes.

(3) Any person, including a franchisee, that meets all of the following:

(i) Owns and operates no fewer than **[five] three** retail outlets in this Commonwealth, having one hundred per cent common ownership.

(ii) Purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer.

(iii) Maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.

Section 13. Section 1709-B(a) of the act, amended July 12, 2006 (P.L.1137, No.116), is amended to read:

Section 1709-B. Limitation on Credits.—(a) The total amount of credits approved by the department shall not exceed **[forty million dollars**

(\$40,000,000)] *fifty-five million dollars (\$55,000,000)* in any fiscal year. Of that amount, [eight million dollars (\$8,000,000)] *eleven million dollars (\$11,000,000)* shall be allocated exclusively for small businesses. However, if the total amounts allocated to either the group of applicants exclusive of small businesses or the group of small business applicants is not approved in any fiscal year, the unused portion will become available for use by the other group of qualifying taxpayers.

* * *

Section 14. Section 1712-B of the act, amended July 12, 2006 (P.L.1137, No.116), is repealed:

[Section 1712-B. Termination.—The department shall not approve a research and development tax credit under this article for taxable years ending after December 31, 2015.]

Section 15. The definition of "qualified tax liability" in section 1702-D of the act, added July 25, 2007 (P.L.373, No.55), is amended and the section is amended by adding definitions to read:

Section 1702-D. Definitions.

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

* * *

"Minimum stage filming requirements." Include:

(1) Taxpayers with a Pennsylvania production expense of less than \$30,000,000 per production must:

- (i) build at least one set at a qualified production facility;**
- (ii) shoot for a minimum of ten days at a qualified production facility; and**

(iii) spend or incur a minimum of \$1,500,000 in direct expenditures relating to the use or rental of tangible property or for performance of services provided by a qualified production facility.

(2) Taxpayers with a Pennsylvania production expense of at least \$30,000,000 per production must:

- (i) build at least two sets at a qualified production facility;**
- (ii) shoot for a minimum of 15 days at a qualified production facility; and**

(iii) spend or incur a minimum of \$5,000,000 in direct expenditures relating to the use or rental of tangible property at or for performance of services provided by a qualified production facility.

* * *

"Qualified production facility." A film production facility located within this Commonwealth that contains at least one sound stage with a column-free, unobstructed floor space and meets either of the following criteria:

(1) Has had a minimum of \$10,000,000 invested in the film production facility in land or a structure purchased or ground-up, purpose-built new construction or renovation of existing improvement.

(2) Meets at least three of the following criteria:

(i) A sound stage having an industry standard noise criteria rating of 25 or better.

(ii) A permanent grid with a minimum point load capacity of no less than 1,000 pounds at a minimum of 25 points.

(iii) *Built-in power supply available at a minimum of 4,000 amps per sound stage without the need for supplemental generators.*

(iv) *A height from sound stage floor to permanent grid of a minimum of 20 feet.*

(v) *A sound stage with a sliding or roll-up access door with a minimum height of 14 feet.*

(vi) *A built-in HVAC capacity during shoot days with a minimum of 50 tons of cooling capacity available per sound stage.*

(vii) *Perimeter security that includes a 24-hour, seven-days-a-week security presence and use of access control identification badges.*

(viii) *On-site lighting and grip department with an available inventory stored at the film production facility with a minimum cost of investment of \$500,000.*

(ix) *A sound stage with contiguous production offices with a minimum of 5,000 square feet per sound stage.*

"Qualified tax liability." The liability for taxes imposed under Article III, IV [or], VI, VII or IX. The term shall not include any tax withheld by an employer from an employee under Article III.

* * *

Section 15.1. Section 1703-D(b) of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

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

* * *

(b) Review and approval.—[The department shall review and approve or disapprove the applications in the order in which they are received.] *The department shall establish application periods not to exceed 90 days each. All applications received during the application period shall be reviewed and evaluated by the department based on the following criteria:*

(1) *The anticipated number of production days in a qualified production facility.*

(2) *The anticipated number of Pennsylvania employees.*

(3) *The number of preproduction days through postproduction days in Pennsylvania.*

(4) *The anticipated number of days spent in Pennsylvania hotels.*

(5) *The Pennsylvania production expenses in comparison to the production budget.*

(6) *The use of studio resources.*

Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department may approve the taxpayer for a tax credit. *Applications not approved may be reviewed and considered in subsequent application periods. The department may approve a taxpayer for a tax credit based on its evaluation of the criteria under this subsection.*

* * *

Section 16. Sections 1705-D and 1707-D of the act, added July 25, 2007 (P.L.373, No.55), are amended to read:

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

(a) General rule.—If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, it shall

be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.—A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the tax credit can be applied against any tax liability under subsection (a).

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

(d) (Reserved).

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

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

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

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

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

(f) Purchasers and assignees.—*Except as set forth in subsection (g), the following apply:*

(1) The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the credit in the taxable year in which the purchase or assignment is made.

(2) The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year.

(3) The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

(4) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

(g) Limited carry forward of tax credits by a purchaser or assignee.—A purchaser or assignee may carry forward all or any unused portion of a tax credit purchased or assigned in calendar year 2010 against qualified tax liabilities incurred in taxable years 2011 and 2012.

Section 1707-D. Limitations.

(a) Cap.—In no case shall the aggregate amount of tax credits awarded in any fiscal year under this article exceed **[\$75,000,000.] \$60,000,000. The department may, in its discretion, award in one fiscal year up to:**

(1) *Thirty percent of the dollar amount of film production tax credits available to be awarded in the next succeeding fiscal year.*

(2) *Twenty percent of the dollar amount of film production tax credits available to be awarded in the second successive fiscal year.*

(3) *Ten percent of the dollar amount of film production tax credits available to be awarded in the third successive fiscal year.*

(a.1) Advance award of credits.—The advance award of film tax credits under subsection (a) shall:

(1) count against the total dollar amount of credits that the department may award in that next succeeding fiscal year; and

(2) reduce the dollar amount of credits that the department may award in that next succeeding fiscal year.

The individual limitations on the awarding of film production tax credits apply to an advance award of film production tax credits under subsection (a) and to a combination of film production tax credits awarded against the current fiscal year cap and against the next succeeding fiscal year's cap.

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

(1) [The] Except as set forth in paragraph (1.1), the aggregate amount of film production tax credits awarded by the department under section 1703-D(d) to a taxpayer for a film may not exceed 25% of the qualified film production expenses to be incurred.

(1.1) In addition to the tax credit under paragraph (1), a taxpayer is eligible for a credit in the amount of 5% of the qualified film production expenses incurred by the taxpayer if the taxpayer:

(i) films a feature film, television film or television series, which is intended as programming for a national audience; and

(ii) films in a qualified production facility which meets the minimum stage filming requirements.

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

(c) Qualified production facility.—To be considered a qualified production facility under subsection (b)(1.1), the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital improvement costs incurred for the facility so that the threshold amounts set in the definition of "qualified production facility" under section 1702-D are satisfied, and upon verification, the facility shall be registered by the department officially as a qualified production facility.

(d) Waiver.—The department may make a determination that the financial benefit to this Commonwealth resulting from the direct investment in or payments made to Pennsylvania facilities outweighs the benefit of maintaining the 60% requirement contained in the definition of "qualified film production expense." If such determination is made, the department may waive the requirement that 60% of a film's total production expenses be comprised of Pennsylvania production expenses for a feature film, television film or television series that is intended as programming for a national audience and is filmed in a qualified production facility if the taxpayer who has Pennsylvania production expenses of at least \$30,000,000 per production meets the minimum stage filming requirements.

Section 17. The definitions of "business firm," "educational improvement organization," "eligible student with a disability," "income allowance," "innovative educational program," "maximum annual household income," "pre-kindergarten scholarship organization," "pre-kindergarten scholarship program" and "scholarship program" in section 1702-F of the act, added October 9, 2009 (P.L.451, No.48), are amended and the section is amended by adding definitions to read:

Section 1702-F. Definitions.

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

"Business firm." An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article III, IV, VI, VII, VIII, IX or XV *or a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921*. The term includes a pass-through entity.

* * *

"Educational improvement organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual receipts as grants to a public school, *a chartered school as defined in section 1376.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or a private school approved under section 1376 of the Public School Code of 1949*, for innovative educational programs.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity. *A nonprofit entity shall include a school district foundation, public school foundation, charter school foundation or cyber charter school foundation.*

* * *

"Eligible student with a disability." A pre-kindergarten student or a school-age student who meets all of the following:

(1) Is **[either]** enrolled in a special education school or has otherwise been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability," as defined in 34 CFR § 300.8 (relating to child with a disability).

(2) Needs special education and related services.

(3) Is enrolled in a pre-kindergarten program or in a school.

(4) Is a member of a household with a household income of not more than the maximum annual household income.

* * *

"Income allowance."

(1) As follows:

(i) Before July 1, 2011, \$10,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(ii) After June 30, 2011, *and through June 30, 2013*, \$12,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(iii) After June 30, 2013, and through June 30, 2014, \$15,000 for each eligible student, eligible pre-kindergarten student and dependent member of the household.

(2) Beginning July 1, [2012] 2014, the Department of Community and Economic Development shall annually adjust the income allowance amounts under paragraph (1) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Innovative educational program." An advanced academic or similar program that is not part of the regular academic program of a public school but that enhances the curriculum or academic program of the public school [or provides pre-kindergarten programs to public school students,], chartered school or private school or provides pre-kindergarten programs to public school students, students of a chartered school or students of a private school. For the purposes of this definition, a chartered school shall mean a chartered school as defined in section 1376.1 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, and a private school shall mean a private school approved under section 1376 of the Public School Code of 1949.

"Maximum annual household income."

(1) Except as set forth in paragraph (2) and subject to paragraph (3), as follows:

(i) Before July 1, 2011, not more than \$50,000.

(ii) After June 30, 2011, and through June 30, 2013, not more than \$60,000.

(iii) After June 30, 2013, not more than \$75,000.

(2) With respect to an eligible student with a disability, as calculated by multiplying:

(i) the sum of:

(A) the applicable amount under paragraph (1); and

(B) the applicable income allowance; by

(ii) the applicable support level factor according to the following table:

Support Level	Support Level Factor
1	1.50
2	2.993

(3) Beginning July 1, [2012] 2014, the Department of Community and Economic Development shall annually adjust the income amounts under paragraphs (1) and (2) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

* * *

"Pre-kindergarten scholarship organization." A nonprofit entity which:

(1) [either] is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate segregated fund by a scholarship organization that has been qualified under section 1703-F; and

(2) contributes at least 80% of its annual cash receipts to a pre-kindergarten scholarship program by expending or otherwise irrevocably encumbering those funds for distribution during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

"Pre-kindergarten scholarship program." A program to provide tuition to eligible pre-kindergarten students to attend a pre-kindergarten program operated by or in conjunction with a school located in this Commonwealth and that includes an application and review process for the purpose of making awards to eligible pre-kindergarten students and awards scholarships to eligible pre-kindergarten students without limiting availability to only students of one school *or one building within a school district or nonpublic school entity*.

* * *

"Scholarship." An award under a scholarship program to pay tuition and school-related fees to attend a school.

* * *

"Scholarship program." A program to provide tuition *and school-related fees* to eligible students to attend a school located in this Commonwealth. A scholarship program must include an application and review process for the purpose of making awards to eligible students. The award of scholarships to eligible students shall be made without limiting availability to only students of one school *or one building within a school district or nonpublic school entity*.

* * *

"School-related fees." Fees charged by a school to all students for books, instructional materials, technology equipment and services, uniforms and activities.

* * *

Section 18. Sections 1703-F(c) and (d), 1705-F and 1706-F of the act, added October 9, 2009 (P.L.451, No.48), are amended to read:
Section 1703-F. Qualification and application.

* * *

(c) Scholarship organizations and pre-kindergarten scholarship organizations.—A scholarship organization or pre-kindergarten scholarship organization must certify to the department that the organization is eligible to participate in the program established under this article and must agree to annually report the following information to the department by **[December 1, 2005, and] September 1** of each year **[thereafter]**:

(1) (i) The number of scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(ii) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible pre-kindergarten students.

(iii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(iv) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

(vi) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades nine through 12.

(vii) Where the scholarship organization or pre-kindergarten scholarship organization collects information on a county-by-county basis, the total number and the total amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization or pre-kindergarten scholarship organization awarded scholarships.

(viii) The total number of scholarship applications processed and the amounts of any application fees charged, either per scholarship application or in the aggregate through a third-party processor.

(ix) The organization's Federal Form 990 or other Federal form indicating the tax status of the organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the organization's financial statements conducted by a certified public accounting firm.

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than **[September 1, 2005, and]** May 1 of each year **[thereafter]**, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization and pre-kindergarten scholarship organization.

(3) The department may not require any other information to be provided by scholarship organizations or pre-kindergarten scholarship organizations, except as expressly authorized in this article.

(d) Educational improvement organization.—

(1) An application submitted by an educational improvement organization must describe its proposed innovative educational program or programs in a form prescribed by the department. The department shall consult with the Department of Education as necessary. The department shall review and approve or disapprove the application. In order to be eligible to participate in the program established under this article, an educational improvement organization must agree to annually report the following information to the department by December 1, 2005, and September 1 of each year thereafter:

(i) The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year.

(ii) A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements.

(iii) The names of the public schools and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented.

(iv) Where the educational improvement organization collects information on a county-by-county basis, the total number and the total amount of grants made during the immediately preceding school year for programs at public schools in each county in which the educational improvement organization made grants.

(v) *The organization's Federal Form 990 or other Federal form indicating the tax status of the organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the organization's financial statements conducted by a certified public accounting firm.*

(2) The information required under paragraph (1) shall be submitted on a form provided by the department. No later than September 1, 2005, and May 1 of each year thereafter, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed educational improvement organization.

(3) The department may not require any other information to be provided by educational improvement organizations, except as expressly authorized in this article.

* * *

Section 1705-F. Tax credit.

(a) **Scholarship or educational improvement organizations.**—In accordance with section 1706-F(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV *or under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921*, to a business firm providing proof of a contribution to a scholarship organization or educational improvement organization in the taxable year in which the contribution is made which shall not exceed 75% of the total amount contributed during the taxable year by the business firm. **[Such] For fiscal year 2012-2013, the tax credit shall not exceed [\$300,000] \$400,000** annually per business firm for contributions made to scholarship organizations or educational improvement organizations. **For fiscal year 2013-2014, and each fiscal year thereafter, the tax credit shall not exceed \$750,000 annually per business firm for contributions made to scholarship organizations or educational improvement organizations.**

(b) **Additional amount.**—The Department of Revenue shall grant a tax credit of up to 90% of the total amount contributed during the taxable year if the business firm provides a written commitment to provide the scholarship organization or educational improvement organization with the same amount of contribution for two consecutive tax years. The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) **Pre-kindergarten scholarship organizations.**—In accordance with section 1706-F(a), the Department of Revenue shall grant a tax credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV *or under Article XVI of The Insurance Company Law of 1921* to a business firm providing proof of a contribution to a pre-kindergarten scholarship organization in the taxable year in which the contribution is made which shall be equal to 100% of the first \$10,000 contributed during the taxable year by the business firm, and which shall not exceed 90% of the remaining amount contributed during the taxable year by the business firm. Such credit shall not exceed **[\$150,000] \$200,000** annually per business firm for contributions made to pre-kindergarten scholarship organizations.

(d) **Combination of tax credits.**—A business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under subsection (a) or (b) or (c). In no case may a business

firm receive tax credits in any tax year in excess of [~~\$300,000~~] *\$400,000* for contributions under subsections (a) and (b) *made during fiscal year 2012-2013 or in excess of \$750,000 for contributions under subsections (a) and (b) made after fiscal year 2012-2013*. In no case shall a business firm receive tax credits in any tax year in excess of [~~\$150,000~~] *\$200,000* for contributions under subsection (c).

(e) Pass-through entity.—

(1) If a pass-through entity does not intend to use all approved tax credits under this section, it may elect in writing to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled for use in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made. The election shall designate the year in which the transferred credits are to be used and shall be made according to procedures established by the Department of Revenue.

(2) A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under this section for the same contribution.

(3) The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

(f) Restriction on applicability of credits.—No credits granted under this section shall be applied against any tax withheld by an employer from an employee under Article III.

(g) Time of application for credits.—

(1) Except as provided in [~~paragraphs (2) and (3)~~] *paragraph (2)*, the department may accept applications for tax credits available during a fiscal year no earlier than July 1 of each fiscal year.

(2) The application of any business firm for tax credits available during a fiscal year as part of the second year of a two-year commitment *or as a renewal of a two-year commitment which was fulfilled in the previous fiscal year* may be accepted no earlier than May 15 preceding the fiscal year.

[(3) The application under subsection (a) of any pass-through entity for approval of single-year tax credits available during a fiscal year against the taxes imposed under Article III or under subsection (b) for approval of credits against such taxes for the first year of a two-year commitment may be accepted by the department no earlier than the first business day following July 7 of the fiscal year.]

Section 1706-F. Limitations.

(a) Amount.—

(1) The total aggregate amount of all tax credits approved shall not exceed [~~\$67,000,000~~] *\$100,000,000* in a fiscal year. No less than [~~\$44,666,667~~] *\$60,000,000* of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations. No less than [~~\$22,333,333~~] *\$30,000,000* of the total aggregate amount shall be used to provide tax credits for contributions from business firms to educational improvement organizations.

(2) *The following apply to specific fiscal years:*

(i) For [~~the~~] fiscal years 2004-2005, 2005-2006 and 2006-2007, the total aggregate amount of all tax credits approved for contribu-

tions from business firms to pre-kindergarten scholarship programs shall not exceed \$5,000,000 in a fiscal year.

(ii) For [the] fiscal [year] *years* 2007-2008, *2008-2009*, *2009-2010*, *2010-2011* and [each fiscal year thereafter] *2011-2012*, the total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$8,000,000 in a fiscal year.

(iii) *For fiscal year 2012-2013 and each fiscal year thereafter, the total aggregate amount of all tax credits approved for contributions from business firms to pre-kindergarten scholarship programs shall not exceed \$10,000,000 in a fiscal year.*

(b) Activities.—No tax credit shall be approved for activities that are a part of a business firm's normal course of business.

(c) Tax liability.—

(1) Except as provided in paragraph (2), a tax credit granted for any one taxable year may not exceed the tax liability of a business firm.

(2) In the case of a credit granted to a pass-through entity which elects to transfer the credit according to section 1705-F(e), a tax credit granted for any one taxable year and transferred to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or partner.

(d) Use.—A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder, member or partner to whom the credit was transferred under section 1705-F(e) may not be carried forward or carried back and is not refundable or transferable.

(e) Nontaxable income.—A scholarship received by an eligible student or eligible pre-kindergarten student shall not be considered to be taxable income for the purposes of Article III.

Section 19. The act is amended by adding articles to read:

ARTICLE XVII-G
RESOURCE MANUFACTURING TAX CREDIT

Section 1701-G. Scope of article.

This article establishes a resource manufacturing tax credit.

Section 1702-G. Definitions.

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

"Company." Any corporation, partnership, limited liability company, limited liability partnership, business trust, affiliate, unincorporated joint venture or other business entity, doing business within this Commonwealth.

"Department." The Department of Revenue of the Commonwealth.

"Downstream company." Includes a company that uses chemical products or chemical compounds manufactured or processed by a qualified taxpayer as a raw material in its production process in this Commonwealth.

"Ethane." A colorless, odorless gaseous alkane, C₂H₆, which occurs as a constituent of natural gas and is used as the raw material in the manufacturing of ethylene.

"Ethylene." *An organic hydrocarbon compound with the formula C₂H₄ or H₂C=CH₂, that is derived from natural gas and petroleum.*

"Gallon." *A United States liquid gallon equal to a volume of 231 cubic inches and equal to 3.785411784 liters or 0.13368 cubic feet, where volumetric measurements made at ambient flowing conditions are typically adjusted for composition and to standard conditions using established industry standard practices.*

"Pass-through entity." *Any of the following:*

- (1) *A partnership as defined in section 301(n.0).*
- (2) *A Pennsylvania S corporation as defined in section 301(n.1).*
- (3) *An unincorporated entity subject to section 307.21.*

"Qualified tax liability." *The liability for taxes imposed under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term does not include tax withheld under section 316.*

"Qualified taxpayer." *A company that satisfies all of the following:*

- (1) *Purchases ethane for use in manufacturing ethylene at a facility in this Commonwealth which has been placed in service on or after the effective date of this article.*
- (2) *Has made a capital investment of at least \$1,000,000,000 in order to construct the facility and place it into service in this Commonwealth.*
- (3) *Has created at least 2,500 full-time equivalent jobs during the construction phase in order to construct the facility and place it into service in this Commonwealth.*

"Tax credit." *The resource manufacturing tax credit provided under this article.*

"Upstream company." *Includes a company that is engaged in the exploration, development, production, processing, refining or transportation of natural gas, natural gas liquids or petroleum in this Commonwealth.*

Section 1703-G. Application and approval of tax credit.

(a) **Rate.**—*The tax credit shall be equal to \$0.05 per gallon of ethane purchased and used in manufacturing ethylene in this Commonwealth by a qualified taxpayer.*

(b) **Application.**—

(1) *A qualified taxpayer may apply to the department for a tax credit under this section.*

(2) *The application must be submitted to the department by March 1 for the tax credit claimed for ethane purchased and used by the qualified taxpayer during the prior calendar year. The application must be on the form required by the department.*

(3) *The department may require information necessary to document the amount of ethane purchased and used.*

(c) **Review and approval.**—

(1) *The department shall review and approve or disapprove the applications by March 20.*

(2) *Upon approval, the department shall issue a certificate stating the amount of tax credit granted for ethane purchased in the prior calendar year.*

Section 1704-G. Use of tax credits.

(a) **Initial use.**—*Prior to sale or assignment of a tax credit under section 1706-G, a qualified taxpayer must first use a tax credit against the*

qualified tax liability incurred in the taxable year for which the tax credit was approved.

(b) Eligibility.—The credit may be applied against up to 20% of the qualified taxpayer's qualified tax liabilities incurred in the taxable year for which the credit was approved.

(c) Application.—The tax credit shall be applied against the qualified taxpayer's liability only after all other statutory tax credits and deductions available to the qualified taxpayer have been used.

(d) Limit.—A qualified taxpayer that has been granted a tax credit under this article shall be ineligible for any other tax credit provided under this act.

Section 1705-G. Carryover, carryback and refund.

A tax credit cannot be carried back, carried forward or be used to obtain a refund.

Section 1706-G. Sale or assignment.

(a) Authorization.—If a qualified taxpayer holds a tax credit through the end of the calendar year in which the tax credit was granted, the qualified taxpayer may sell or assign a tax credit, in whole or in part.

(b) Application.—

(1) To sell or assign a tax credit, a qualified taxpayer must file an application for the sale or assignment of the tax credit with the Department of Community and Economic Development. The application must be on a form required by the Department of Community and Economic Development.

(2) To approve an application, the Department of Community and Economic Development must receive:

(i) a finding from the department that the applicant has:

(A) filed all required State tax reports and returns for all applicable taxable years; and

(B) paid any balance of State tax due as determined by assessment or determination by the department and not under timely appeal; and

(ii) in the case of a sale or assignment to a company that is not an upstream company or downstream company, a certification from the qualified taxpayer that the qualified taxpayer had offered to sell or assign the tax credit:

(A) exclusively to a downstream company for a period of 30 days following approval of the tax credit under section 1703-G(c); and

(B) to an upstream company or downstream company for a period of 30 days following expiration of the period under clause (A).

(c) Approval.—Upon approval by the Department of Community and Economic Development, a qualified taxpayer may sell or assign, in whole or in part, a tax credit.

Section 1707-G. Purchasers and assignees.

(a) Time.—The purchaser or assignee under section 1706-G must claim the tax credit in the calendar year in which the purchase or assignment is made.

(b) Amount.—The amount of the tax credit that a purchaser or assignee under section 1706-G may use against any one qualified tax

liability may not exceed 50% of any of the qualified tax liabilities for the taxable year.

(c) *Resale and reassignment.*—

(1) *A purchaser under section 1706-G may not sell or assign the purchased tax credit.*

(2) *An assignee under section 1706-G may not sell or assign the assigned tax credit.*

(d) *Notice.*—*The purchaser or assignee under section 1706-G shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the department.*

Section 1708-G. Pass-through entity.

(a) *Election.*—*If a pass-through entity has an unused tax credit, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholders, members or partners are entitled.*

(b) *Limitation.*—*The same unused tax credit under subsection (a) may not be claimed by:*

(1) *the pass-through entity; and*

(2) *a shareholder, member or partner of the pass-through entity.*

(c) *Amount.*—*The amount of the tax credit that a transferee under subsection (a) may use against any one qualified tax liability may not exceed 20% of any qualified tax liabilities for the taxable year.*

(d) *Time.*—*A transferee under subsection (a) must claim the tax credit in the calendar year in which the transfer is made.*

(e) *Sale and assignment.*—*A transferee under subsection (a) may not sell or assign the tax credit.*

Section 1709-G. Administration.

(a) *Audits and assessments.*—*The department has the following powers:*

(1) *To audit a qualified taxpayer claiming a tax credit to ascertain the validity of the amount claimed.*

(2) *To issue an assessment against a qualified taxpayer for an improperly issued tax credit. The procedures, collection, enforcement and appeals of any assessment made under this section shall be governed by Article II.*

(b) *Guidelines and regulations.*—*The department shall develop written guidelines for the implementation of this article. The guidelines shall be in effect until the department promulgates regulations for the implementation of the provisions of this article.*

Section 1710-G. Reports to General Assembly.

(a) *Annual report.*—*By October 1, 2018, and October 1 of each year thereafter, the department shall submit a report on the tax credit provided by this article to the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Finance Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives and the chairman and minority chairman of the Finance Committee of the House of Representatives. The report must include the names of the qualified taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for, utilized by or sold or assigned by a qualified taxpayer.*

(b) Reconciliation report.—On May 1, 2028, the Department of Community and Economic Development shall submit to the Secretary of the Senate and the Chief Clerk of the House of Representatives a reconciliation report on the effectiveness of this article. This report shall include, at a minimum, the following information for the preceding ten years:

(1) The name and business address of all qualified taxpayers who have been granted tax credits under this article.

(2) The amount of tax credits granted to each qualified taxpayer.

(3) The total number of jobs created by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company. This paragraph includes the average annual salary and hourly wage information.

(4) The amount of taxes paid under Article II by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(5) The amount of taxes withheld from employees or paid by members, partners or shareholders of the pass-through entities under Article III of the qualified taxpayer, upstream company and downstream company, and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(6) The amount of taxes paid under Article IV by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(7) The amount of taxes paid under Article VI by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(8) The amount of taxes paid under Article XI by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(9) The amount of any other State or local taxes paid by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer and upstream company and downstream company.

(10) Any other information pertaining to the economic impact of this article in this Commonwealth.

(c) Reduction.—If the reconciliation report issued under subsection (b) reveals that the total amount of the tax credits granted under this article exceeds the total amount of tax revenue reported under subsection (b)(4)

through (9), the report must include any recommendation for changes in the calculation of the credit.

(d) *Publication.*—The reports required by this section shall be public records and shall be available electronically on the Internet website of either the department or the Department of Community and Economic Development. The reports required by this section shall not contain "confidential proprietary information" as defined in section 102 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Section 1711-G. Expiration.

This article shall expire December 31, 2044.

ARTICLE XVII-G.1

EDUCATIONAL OPPORTUNITY SCHOLARSHIP TAX CREDIT

Section 1701-G.1. Scope of article.

This article establishes the educational opportunity scholarship tax credit.

Section 1702-G.1. Definitions.

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

"Applicant." An eligible student who applies for a scholarship.

"Assessment." The Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) of the Public School Code of 1949 and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor statute or any other test required to achieve other standards established by the Department of Education for the public school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

"Attendance boundary." A geographic area of residence used by a school district to assign a student to a public school.

"Average daily membership." As defined in section 2501(3) of the Public School Code of 1949.

"Business firm." An entity authorized to do business in this Commonwealth and subject to a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term includes a pass-through entity.

"Contribution." A donation of cash, personal property or services, the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the services.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Elementary school." A school which is not a secondary school.

"Eligible student." A student or a student with a disability who:

(1) resides within the attendance boundary of a low-achieving school as of the first day of classes of the school year; and

(2) is a member of a household which has a household income no greater than the maximum annual household income allowance.

"Household." *An individual who lives alone or with the following: a spouse, parent and their unemancipated minor children, other unemancipated minor children who are related by blood or marriage or other adults or unemancipated minor children living in the household who are dependent upon the individual.*

"Household income." *All moneys or property received by a household of whatever nature and from whatever source derived. The term does not include the following:*

(1) *Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.*

(2) *Disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government.*

(3) *Payments commonly recognized as old-age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment.*

(4) *Payments commonly known as public assistance or unemployment compensation payments by a governmental agency.*

(5) *Payments to reimburse actual expenses.*

(6) *Payments made by employers or labor unions for programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.*

(7) *Compensation received by United States servicemen serving in a combat zone.*

"Income allowance."

(1) *The following shall apply:*

(i) *After June 30, 2012, and through June 30, 2013, \$12,000 for each dependent member of the household.*

(ii) *After June 30, 2013, and through June 30, 2014, \$15,000 for each dependent member of the household.*

(2) *Beginning July 1, 2014, the Department of Community and Economic Development shall annually adjust the income allowance amounts under paragraph (1) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.*

"Kindergarten." *A one-year formal educational program that occurs during the school year immediately prior to first grade. The term includes a part-time and a full-time program.*

"Low-achieving school." *A public school that ranked in the lowest 15% of its designation as an elementary school or a secondary school based on combined mathematics and reading scores from the annual assessment administered in the previous school year and for which the Department of Education has posted results on its publicly accessible Internet website. The term does not include a charter school, cyber charter school or area vocational-technical school.*

"Maximum annual household income allowance."

(1) *Except as stated in paragraph (2) and subject to adjustment under paragraph (3), the sum of:*

(i) *Either:*

(A) after June 30, 2012, and through June 30, 2013, not more than \$60,000; or

(B) after June 30, 2013, not more than \$75,000.

(ii) The applicable income allowance.

(2) With respect to a student with a disability, as calculated by multiplying:

(i) the applicable amount under paragraph (1); by

(ii) the applicable support level factor according to the following table:

Support Level	Support Level Factor
1	1.50
2	2.993

(3) Beginning July 1, 2014, the Department of Community and Economic Development shall annually adjust the income amounts under paragraphs (1) and (2) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Nonpublic school." A school which is a nonprofit organization and which is located in the Commonwealth. The term does not include a public school.

"Parent." An individual who:

(1) is a resident of the Commonwealth; and

(2) either:

(i) has legal custody or guardianship of a student; or

(ii) keeps in his home a student and supports the student gratis as if the student were a lineal descendant of the individual.

"Participating nonpublic school." A nonpublic school which notifies the Department of Education under section 1710-G.1 that it wishes to participate in the program.

"Participating public school." A public school in a school district which notifies the Department of Education under section 1710-G.1(b) that it wishes to participate in the program. The term shall not include a low-achieving school.

"Pass-through entity." A partnership as defined in section 301(n.0), a single-member limited liability company treated as a disregarded entity for Federal income tax purposes or a Pennsylvania S corporation as defined in section 301(n.1).

"Public School Code of 1949." The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Program." The Educational Opportunity Scholarship Tax Credit Program established under this article.

"Recipient." An applicant who receives a scholarship.

"Scholarship." An award given to an applicant for the recipient to pay tuition and school-related fees necessary to attend a participating nonpublic school or a participating public school located in a school district which is not the recipient's school district of residence.

"Scholarship organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes at least 80% of its annual cash receipts to a scholarship program.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts to a scholarship program when it expends or otherwise irrevocably encumbers those funds for distribution during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"School." An elementary school or a secondary school at which the compulsory attendance requirements of the Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

"School age." The age of an individual from the earliest admission age to a school's kindergarten or, when no kindergarten is provided, the school's earliest admission age for beginners, until the end of the school year the individual attains 21 years of age or graduation from high school, whichever occurs first.

"School district of residence." The school district in which the student's primary domicile is located.

"School-related fees." Fees charged by a school to all students for books, instructional materials, technology equipment and services, uniforms and activities.

"Secondary school." A school with an eleventh grade.

"Special education school." A school or program within a school that is designated specifically and exclusively for students with any of the disabilities listed in 34 CFR § 300.8 (relating to child with a disability) and meets one of the following:

(1) is licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act;

(2) is accredited by an accrediting association approved by the State Board of Education;

(3) is a school for the blind or deaf receiving Commonwealth appropriations; or

(4) is operated by or under the authority of a bona fide religious institution or by the Commonwealth or any political subdivision thereof.

"Student." An individual who meets all of the following:

(1) Is school age.

(2) Is a resident of this Commonwealth.

(3) Attends or is about to attend a school.

"Student with a disability." A student who meets all of the following:

(1) Is either enrolled in a special education school or has otherwise been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability" as defined in 34 CFR § 300.8 (relating to child with a disability).

(2) Needs special education and related services.

"Support level." The level of support needed by an eligible student with a disability, as provided in the following matrix:

Support Level 1 - The student is not enrolled in a special education school.

Support Level 2 - The student is enrolled as a student in a special education school.

Section 1703-G.1. Qualification and application.

(a) *Establishment.*—*The Educational Opportunity Scholarship Tax Credit Program is established. The program shall provide tax credits to entities that provide contributions to scholarship organizations. The scholarship organizations must enhance the educational opportunities available to students in this Commonwealth by providing scholarships to eligible students who reside within the attendance boundary of low-achieving schools to attend schools which are not low-achieving schools and which are not a public school within the school district of residence.*

(b) *Information.*—*In order to qualify under this article, a scholarship organization must submit information to the department that enables the department to confirm that the scholarship organization is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).*

(c) *Annual certification of eligibility.*—*By August 15, 2012, and by February 15, 2013, and each February 15 thereafter, a scholarship organization must certify to the department that the organization is eligible to participate in the program.*

(d) *Report.*—

(1) *A scholarship organization must agree to report the following information on a form provided by the department by September 1, 2013, and each September 1 thereafter:*

(i) *The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades kindergarten through eight.*

(ii) *The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.*

(iii) *The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.*

(iv) *The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades 9 through 12.*

(v) *The number of scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.*

(vi) *The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.*

(vii) *Where the scholarship organization collects information on a county-by-county basis, the total number and the total amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization awarded scholarships.*

(viii) *The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.*

(ix) *The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a*

household income that does not exceed 185% of the Federal poverty level.

(x) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xi) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xii) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiii) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiv) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(xv) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(xvi) The total number of scholarship applications processed and the amounts of any application fees charged either per scholarship application or in the aggregate through a third-party processor.

(xvii) The scholarship organization's Federal Form 990 or other Federal form indicating the tax status of the scholarship organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the scholarship organization's financial statements conducted by a certified public accounting firm.

(2) *No later than May 1, 2013, and each May 1 thereafter, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization.*

(3) *The department may not require any other information to be provided by scholarship organizations, except as expressly authorized in this article.*

(e) *Notification.—The department shall notify a scholarship organization that it meets the requirements of this article for that fiscal year no later than 60 days after the scholarship organization submits the information required under this section.*

(f) *Publication.—The department shall annually publish a list of each scholarship organization qualified under this section in the Pennsylvania Bulletin and shall post and update the list as necessary on the publicly accessible Internet website of the department.*

Section 1704-G.1. Tax credit application.

(a) *Scholarship organization.—A business firm shall apply to the department for a tax credit under section 1705-G.1. A business firm shall receive a tax credit under this article if the scholarship organization that receives the contribution appears on the list published under section 1703-G.1(f).*

(b) *Availability of tax credits.—Tax credits under this article shall be made available by the department on a first-come-first-served basis within the limitation established under section 1706-G.1(a).*

(c) *Contributions.—A contribution by a business firm to a scholarship organization shall be made no later than 60 days following the approval of an application under subsection (a).*

Section 1705-G.1. Tax credit.

(a) *Scholarship organizations.—*

(1) *In accordance with section 1706-G.1(a), the Department of Revenue shall grant a tax credit against any tax due under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or under Article III, IV, VI, VII, VIII, IX or XV to a business firm providing proof of a contribution to a scholarship organization in the taxable year in which the contribution is made, which shall not exceed 75% of the total amount contributed during the taxable year by the business firm.*

(2) *For the fiscal year 2012-2013, the tax credit shall not exceed \$400,000 annually per business firm for contributions made to scholarship organizations.*

(3) *For the fiscal years 2013-2014 and each fiscal year thereafter, the tax credit shall not exceed \$750,000 annually per business firm for contributions made to scholarship organizations.*

(b) *Additional amount.—*

(1) *The Department of Revenue shall grant a tax credit of up to 90% of the total amount contributed during the taxable year if the business firm provides a written commitment to provide the scholarship organization with the same amount of contribution for two consecutive tax years.*

(2) *The business firm must provide the written commitment under this subsection to the department at the time of application.*

(c) *Combination of tax credits.—*

(1) *A business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under subsection (a) or (b).*

(2) *In no case may a business firm receive tax credits in any tax year:*

(i) *in excess of \$400,000 for contributions under subsections (a) and (b) made during fiscal year 2012-2013; or*

(ii) *in excess of \$750,000 for contributions under subsections (a) and (b) made during fiscal year 2013-2014 or any fiscal year thereafter.*

(d) *Pass-through entity.—*

(1) *If a pass-through entity does not intend to use all approved tax credits under this section, it may elect in writing to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled for use in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made. The election shall designate the year in which the transferred credits are to be used and shall be made according to procedures established by the Department of Revenue.*

(2) *A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under this section for the same contribution.*

(3) *The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.*

(e) *Restriction on applicability of credits.—No credits granted under this section shall be applied against any tax withheld by an employer from an employee under Article III.*

(f) *Time of application for credits.—*

(1) *Except as provided in paragraph (2), the department may accept applications for tax credits available during a fiscal year no earlier than July 1 of each fiscal year.*

(2) *The application of any business firm for tax credits available during a fiscal year as part of the second year of a two-year commitment or as a renewal of a two-year commitment that was fulfilled in the previous fiscal year may be accepted no earlier than May 15 preceding the fiscal year.*

Section 1706-G.1. Tax credit limitations.

(a) *Amount.—The total aggregate amount of all tax credits approved shall not exceed \$50,000,000 in a fiscal year.*

(b) *Activities.—No tax credit shall be approved for activities that are a part of a business firm's normal course of business.*

(c) *Tax liability.—*

(1) *Except as provided in paragraph (2), a tax credit granted for any one taxable year may not exceed the tax liability of a business firm.*

(2) *In the case of a credit granted to a pass-through entity which elects to transfer the credit according to section 1705-G.1(d), a tax credit granted for any one taxable year and transferred to a shareholder, member or partner may not exceed the tax liability of the shareholder, member or partner.*

(d) *Use.—A tax credit not used by the applicant in the taxable year the contribution was made or in the year designated by the shareholder,*

member or partner to whom the credit was transferred under section 1705-G.1(d) may not be carried forward or carried back and is not refundable or transferable.

(e) Nontaxable income.—A scholarship received by an eligible student shall not be considered to be taxable income for the purposes of Article III. Section 1707-G.1. Tax credit lists.

The Department of Revenue shall provide a list of all scholarship organizations receiving contributions from business firms granted a tax credit under this article to the General Assembly by June 30 of each year. Section 1708-G.1. Scholarships.

(a) Notice.—By August 15, 2012, and by February 1 of each year thereafter, the department shall provide all scholarship organizations with a list of the low-achieving schools located within each school district.

(b) Award.—A scholarship organization may award a scholarship to an applicant who resides within the attendance boundary of a low-achieving school to attend a participating public school or a participating nonpublic school selected by the parent of the applicant. In awarding scholarships, a scholarship organization shall give preference to any of the following:

(1) An applicant who received a scholarship for the prior school year.

(2) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made.

(3) An applicant of a household with a household income that does not exceed 185% of the Federal poverty level for the school year preceding the school year for which the application is being made and who resides within any of the following:

(i) a first class school district;

(ii) a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time; or

(iii) a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(c) Home schooling.—A scholarship organization shall not award a scholarship to an applicant for enrollment in a home education program under section 1327.1 of the Public School Code of 1949.

(d) Funding.—The aggregate amount of scholarships shall not exceed the aggregate amount of contributions made by business firms to the scholarship organization.

(e) Amount.—

(1) The maximum amount of a scholarship awarded to an applicant without a disability shall be \$8,500.

(2) The maximum amount of a scholarship awarded to an applicant with a disability shall be \$15,000.

(3) In no case shall the combined amount of the scholarship awarded to a recipient and any additional financial assistance provided to the recipient exceed the tuition rate and school-related fees for the

participating public school or participating nonpublic school that the recipient will attend.

(f) Taxation.—A scholarship shall not be considered taxable income for purposes of Article III or a local taxing ordinance.

(g) Financial assistance.—A scholarship shall not constitute financial assistance or an appropriation to the participating public school or the participating nonpublic school attended by a recipient.

Section 1709-G.1. Low-achieving schools.

(a) List of low-achieving schools.—By September 1, 2012, and by February 1 of each year thereafter, the Department of Education shall publish on its publicly accessible Internet website and in the Pennsylvania Bulletin a list of the low-achieving schools for the following school year.

(b) Notice.—By August 1, 2012, and by February 1 of each year thereafter, the Department of Education shall notify every school district identified as having at least one low-achieving school of its designation and shall furnish the school district with a list of the low-achieving schools located within the school district.

(c) Publication.—Within 15 days of receipt of a notification under subsection (b), a school district shall post on its publicly accessible Internet website notice of all of the following:

(1) A description of the program.

(2) Instructions for applying for a scholarship.

(3) A list of schools in the school district that have been designated by the Department of Education as low-achieving schools.

(4) Notice that a parent must contact directly a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the program.

(d) Notification to parents.—

(1) Within 15 days of receipt of a notification under subsection (b), a school district shall notify the parents of each student who is currently attending or residing within the attendance boundary of a low-achieving school during the school year of the school's designation.

(2) Upon registration of a kindergarten student, a school district shall notify the parents of the kindergarten student that the student will be assigned to a low-achieving school during the school year of the school's designation.

(3) The notice shall be in a form provided by the Department of Education and shall provide the following information regarding the program:

(i) A description of the program.

(ii) Instructions for obtaining information about applying for a scholarship under the program.

(iii) Notice of the parent's responsibilities with regard to applying to a school district of a participating public school or a participating nonpublic school if the parent seeks to enroll the student in the program.

(e) Average daily membership.—

(1) Notwithstanding any other provision of law to the contrary, a recipient who was enrolled in the recipient's resident school district or in a charter school, regional charter school or cyber charter school when the recipient first received a scholarship shall continue to be counted in the average daily membership of the school district for a

period of one year after enrolling in a participating public school or a participating nonpublic school.

(2) During the year referenced in paragraph (1) and each school year thereafter, a school district of a participating public school in which the recipient is enrolled shall not include the recipient in the school district's average daily membership.

Section 1710-G.1. School participation in program.

(a) Election.—

(1) By August 15, 2012, and by February 15 of each year thereafter, a nonpublic school may elect to participate in the program for the following school year.

(2) By August 15, 2012, and by February 15 of each year thereafter, a school district may elect to participate in the program for the following school year.

(b) Notice.—

(1) A school district or nonpublic school that elects to participate under subsection (a) must notify the Department of Education of its intent to participate.

(2) For a school district, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify all of the following:

(i) Each school within the school district which the school district intends to make a participating public school.

(ii) The amount of tuition and school-related fees attributable to each available seat. The amount under this subparagraph shall not exceed the amount calculated under section 2561 of the Public School Code of 1949.

(3) For a nonpublic school, the notice under paragraph (1) must be submitted on a form developed by the Department of Education and shall specify the amount of tuition and school-related fees attributable to an available seat.

(c) Tuition rates.—

(1) No school district of a participating public school or participating nonpublic school may charge a recipient a higher tuition rate or school-related fee than the participating public school or participating nonpublic school would have charged to a similarly situated student who is not receiving a scholarship.

(2) Notwithstanding the provisions of section 2561 of the Public School Code of 1949, a school district of a participating public school may charge a recipient a tuition rate that is lower than that charged to students who are not recipients of scholarships.

(d) Participating public school criteria.—*The following criteria apply to a participating public school:*

(1) Except as otherwise provided in this article, a school district shall enroll students in a participating public school on a lottery basis from a pool of recipients who meet the application deadline set by the Department of Education until the participating public school fills its available seats. The pool may not include a recipient who:

(i) has been expelled or is in the process of being expelled under section 1317.2 or 1318 of the Public School Code of 1949 and applicable regulations of the State Board of Education; or

(ii) *has been recruited by the school district or its representatives for athletic purposes.*

(2) *The enrollment of recipients may not place the school district in violation of a valid and binding desegregation order.*

(3) *Priority shall be given to:*

(i) *An existing recipient.*

(ii) *A recipient who is a sibling of a student currently enrolled in the school district.*

(e) *Participating nonpublic school criteria.—The following criteria apply to a participating nonpublic school:*

(1) *The participating nonpublic school may not discriminate on a basis which is illegal under Federal or State laws applicable to nonpublic schools.*

(2) *The participating nonpublic school shall comply with section 1521 of the Public School Code of 1949.*

(3) *The participating nonpublic school or its representatives may not recruit a student for athletic purposes.*

(f) *Student rules, policies and procedures.—*

(1) *Prior to enrollment of a recipient, a school district of a participating public school or a participating nonpublic school shall inform the parent of a recipient of any and all rules, policies and procedures of the participating public school or participating nonpublic school, including any academic policies, disciplinary rules and administrative procedures of the participating public school or participating nonpublic school.*

(2) *Enrollment of a recipient in a participating public school or participating nonpublic school shall constitute acceptance of any rules, policies and procedures of the participating public school or participating nonpublic school.*

(g) *Transportation.—*

(1) *Transportation of recipients shall be provided under section 1361 of the Public School Code of 1949.*

(2) *Reimbursement shall be as follows:*

(i) *Transportation of a recipient attending a participating public school shall be subject to reimbursement under section 2541 of the Public School Code of 1949.*

(ii) *Transportation of a recipient attending a participating nonpublic school shall be subject to reimbursement under sections 2509.3 and 2541 of the Public School Code of 1949.*

(h) *Construction.—Nothing in this article shall be construed to:*

(1) *Prohibit a participating nonpublic school from limiting admission to a particular grade level, a single gender or areas of concentration of the participating nonpublic school, including mathematics, science and the arts.*

(2) *Authorize the Commonwealth or any of its agencies or officers or political subdivisions to impose any additional requirements on a participating nonpublic school which are not otherwise authorized under the laws of this Commonwealth or to require a participating nonpublic school to enroll a recipient if the participating nonpublic school does not offer appropriate programs or is not structured or equipped with the necessary facilities to meet the special needs of the recipient or does not offer a particular program requested.*

Section 1711-G.1. Tuition grants by school districts.

(a) *General rule.*—The board of school directors of a school district may use funds received from the Commonwealth for educational purposes to establish a program of tuition grants to provide for the education of students who reside within the district and attend or will attend a public or nonpublic school on a tuition-paying basis.

(b) *Nonpublic school grant amount.*—For students who attend or will attend a nonpublic school, the grant amount for each student shall not exceed the amount of the per pupil State subsidy for basic education of the school district of residence.

(c) *Average daily membership.*—

(1) A student who receives a tuition grant under this section shall be included in the average daily membership for purposes of determining the school district of residence's basic education funding.

(2) A student who receives a grant under this section to attend a public school outside the school district awarding the tuition grant shall not be included in the average daily membership of the school district the student attends.

(d) *Guidelines.*—

(1) The board of school directors of a school district shall prepare guidelines establishing an application form and approval process, standards for verification as to the accuracy of application information, confirmation of attendance by a student who receives a tuition grant, restrictive endorsement of grant checks by parents to the school chosen by the parents, pro rata refunds of grants for students who withdraw during the school year, repayment of refunded grants to the school district and reasonable deadline dates for submission of grant applications.

(2) The board of school directors of a school shall announce the award of grants no later than August 1 of the school year in which the grants will be utilized.

(3) Upon receipt of written confirmation of enrollment from the student's school of choice, grants shall be paid to the parents of a student by a check that may only be endorsed to the selected school.

(4) In the event a student is no longer enrolled prior to the completion of the school term, the school shall send written notice thereof to the school district.

(e) *Nontaxable.*—Grants awarded to students under this section shall not be considered taxable income for purposes of any local taxing ordinance or for purposes of Article III, nor shall such grants constitute financial assistance or appropriations to the school attended by the student.

(f) *Construction.*—Nothing in this section shall be construed to empower the Commonwealth or any school district or any of their agencies or officers to:

(1) prescribe the course content or admissions criteria for any religiously affiliated school;

(2) compel any private school to accept or enroll a student;

(3) impose any additional requirements on any private school that are not otherwise authorized; or

(4) require any school to accept or retain a student if the school does not offer programs or is not structured or equipped with the

necessary facilities to meet the special needs of the student or does not offer a particular program requested.

Section 1712-G.1. Original jurisdiction.

The Pennsylvania Supreme Court shall have exclusive and original jurisdiction to hear any challenge or to render a declaratory judgment concerning the constitutionality of this article. The Pennsylvania Supreme Court may take such action as it deems appropriate, consistent with the Pennsylvania Supreme Court's retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

ARTICLE XVII-H HISTORIC PRESERVATION INCENTIVE TAX CREDIT

Section 1701-H. Scope of article.

This article relates to the historic preservation incentive tax credit.

Section 1702-H. Definitions.

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

"Commission." The Pennsylvania Historical and Museum Commission.

"Completed project." The completion of the restoration of a qualified historic structure in accordance with a qualified rehabilitation plan and the receipt of an occupancy certificate for the structure.

"Department." The Department of Revenue of the Commonwealth.

"Internal Revenue Code." The Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Qualified expenditures." The costs and expenses incurred by a qualified taxpayer in the restoration of a qualified historic structure pursuant to a qualified rehabilitation plan and which are defined as qualified rehabilitation expenditures under section 47(c)(2) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(2)).

"Qualified historic structure." A commercial building located in this Commonwealth that qualifies as a certified historic structure under section 47(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

"Qualified rehabilitation plan." A plan to rehabilitate a qualified historic structure that is approved by the Pennsylvania Historical and Museum Commission as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the United States Secretary of the Interior.

"Qualified tax liability." Tax liability imposed on a taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV, excluding any tax withheld by an employer under Article III.

"Qualified taxpayer." Any natural person, corporation, business trust, limited liability company, partnership, limited liability partnership, association or any other form of legal business entity that:

(1) Is subject to a tax imposed under Article III, IV, VI, VII, VIII, IX, XI or XV, excluding any tax withheld by an employer under Article III.

(2) Owns a qualified historic structure.

"Region." A community action team region as established by the Department of Community and Economic Development.

Section 1703-H. Tax credit certificates.

(a) Application.—

(1) A qualified taxpayer may apply to the Department of Community and Economic Development for a tax credit certificate under this section.

(2) The application shall be on the form required by the Department of Community and Economic Development and shall include a qualified rehabilitation plan.

(3) The application shall be filed on or before February 1 for qualified expenditures incurred and to be incurred in connection with the completed project.

(b) Review, recommendation and approval.—

(1) The Department of Community and Economic Development shall forward applications received under this section to the commission for review.

(2) The commission shall review the proposed rehabilitation plan, verify that the building is a qualified historic structure and recommend approval or disapproval to the Department of Community and Economic Development within 30 days of receipt of the application. The commission shall notify the qualified taxpayer within 15 days of its determination.

(3) The commission shall notify the Department of Community and Economic Development of verification of a completed project and notify the Department of Community and Economic Development of the amount of qualified expenditures incurred by the taxpayer in connection with the completed project.

(4) If the Department of Community and Economic Development has approved the application and received notification of a completed project, it shall issue the qualified taxpayer a tax credit certificate by April 1. A tax credit certificate issued under this section shall not exceed 25% of qualified expenditures determined by the commission to have been incurred by the qualified taxpayer in connection with the completed project.

(5) In granting tax credit certificates under this article, the Department of Community and Economic Development:

(i) Shall not grant more than \$3,000,000 in tax credit certificates in any fiscal year.

(ii) Shall not grant more than \$500,000 in tax credit certificates to a single qualified taxpayer in any fiscal year.

(iii) Shall assure that credits are awarded in an equitable manner to each region in this Commonwealth. However, credits allocated to a region that are unclaimed shall be promptly reallocated to eligible projects in other regions.

(6) Tax credits under this article shall be made available on a first-come, first-served basis within the limitation established under subsection (b)(5).

Section 1704-H. Claiming the credit.

Upon presenting a tax credit certificate to the department, the qualified taxpayer may claim a tax credit against the qualified tax liability of the qualified taxpayer.

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

(a) General rule.—If a qualified taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the qualified taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit provided by this article may be carried over and applied to succeeding taxable years for not more than seven taxable years following the first taxable year for which the qualified taxpayer was entitled to claim the credit.

(b) Application.—A tax credit certificate received by the department in a taxable year first shall be applied against the qualified taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was issued before the tax credit can be applied against any qualified tax liability under subsection (a).

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

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

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

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

(e) Purchasers and assignees.—The purchaser or assignee of all or a portion of a tax credit obtained under section 1703-H shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit. The purchaser or assignee shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the department.

Section 1706-H. Pass-through entity.

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

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

(c) Application.—A shareholder, member or partner of a pass-through entity to whom a credit is transferred under subsection (a) shall

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

Section 1707-H. Administration.

The Department of Community and Economic Development, the commission and the department shall jointly develop written guidelines for the implementation of the provisions of this article.

Section 1708-H. Application of Internal Revenue Code.

The provisions of section 47 of the Internal Revenue Code and the regulations promulgated regarding those provisions shall apply to the department's interpretation and administration of the credit provided under this article. References to the Internal Revenue Code shall mean the sections of the Internal Revenue Code as existing on any date of interpretation of this article, except, if those sections of the Internal Revenue Code referenced in this article are repealed or terminated, references to the Internal Revenue Code shall mean those sections last having full force and effect. If after repeal or termination the Internal Revenue Code sections are revised or reenacted, references in this article to Internal Revenue Code sections shall mean those revised or reenacted sections.

Section 1709-H. Limitation.

Taxpayers shall not be entitled to apply for historic preservation tax credits after the seventh fiscal year following the effective date of this article.

**ARTICLE XVII-I
COMMUNITY-BASED SERVICES TAX CREDIT**

Section 1701-I. Scope of article.

This article relates to community-based services tax credits.

Section 1702-I. Definitions.

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

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

"Contribution." A donation of cash, personal property or services, the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the service.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Individual." An individual who is eligible for community-based services funded through the Office of Developmental Programs and the Office of Mental Health and Substance Abuse Services of the Department of Public Welfare.

"Provider." A nonprofit entity that meets all of the following:

(1) Provides community-based services to individuals with intellectual disabilities or mental illness.

(2) Is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

Section 1703-I. Community-based services tax credit program.

(a) Establishment.—A community-based services tax credit program is established to supplement, not supplant, existing Federal and State funding for community-based services for individuals in this Commonwealth.

(b) Information.—In order to qualify under this article, a provider must submit information to the department that enables the department to confirm that the provider is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(c) Provider application.—

(1) An application submitted to the department by the provider must describe the community-based services it provides to individuals on a form provided by the department.

(2) The department shall consult with the Department of Public Welfare as necessary to determine that the provider provides community-based services for individuals. The department shall review and approve or disapprove the application.

(d) Notification.—The department shall notify the provider that the provider meets the requirements under this article for that fiscal year no later than 60 days after the provider has submitted the application required under this section.

(e) Publication.—The department shall annually publish a list of each provider qualified under this section in the Pennsylvania Bulletin. The list shall also be posted and updated as necessary on the publicly accessible Internet website of the department.

Section 1703.1-I. Restriction on use of contributions.

The contributions received by a provider from a business firm claiming a tax credit under this article must be used for direct care or services relating to direct care of individuals.

Section 1704-I. Availability of tax credits.

(a) Application.—A business firm may apply to the department for a tax credit under section 1705-I. A business firm may receive a tax credit under this article if the provider that receives the contribution from the business firm appears on the list under section 1703-I(e).

(b) Availability of tax credits.—Tax credits under this section shall be made available by the department on a first-come, first-served basis within the limitation established under section 1706-I(a).

(c) Contributions.—A contribution by a business firm to a provider shall be made no later than 60 days following the approval of an application under subsection (a).

Section 1705-I. Grant of tax credits.

(a) General rule.—In accordance with section 1706-I(a), the department shall grant a tax credit certificate. The certificate may be used against a tax liability owed to the department by a business firm that provides proof of a contribution to a provider in the taxable year in which the contribution is made. The business firm may apply the credit against any tax due under Article III, IV, VI, VII, VIII, IX or XV, excluding any tax withheld by an employer under Article III.

(b) Limitation.—The tax credit shall not exceed 50% of the total amount contributed by a business firm to a provider during the taxable year of the business firm. The tax credit shall not exceed \$100,000 annually per business firm.

(c) Additional amount.—

(1) A business firm that contributes to a provider in two or more consecutive years shall qualify for a 75% tax credit for the contributions made in the second year and every consecutive year of making a contribution to a provider.

(2) Nothing in this section shall be construed to require a business firm to contribute to the same provider every year in order for the business firm to qualify for a tax credit under this subsection.

Section 1706-I. Amount of tax credits.

(a) General rule.—The total aggregate amount of all tax credits approved shall not exceed \$3,000,000 in a fiscal year.

(b) Activities.—No tax credit shall be approved for activities that are part of a business firm's normal course of business.

(c) Tax liability.—A tax credit granted for any one taxable year may not exceed the tax liability of a business firm.

(d) Use.—A tax credit not used in the taxable year the contribution was made may not be carried forward or carried back and is not refundable or transferable.

Section 1707-I. Guidelines.

The department, in conjunction with the Department of Revenue and the Department of Public Welfare may establish guidelines as necessary to implement this article.

Section 1708-I. Limitation.

A business firm shall not be entitled to apply for a tax credit after the seventh fiscal year following the effective date of this article.

Section 19.1. Section 1801-B of the act is amended by adding definitions to read:

Section 1801-B. Definitions.

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

* * *

"Small business." A company that is engaged in a for-profit enterprise and that employs 100 or fewer individuals.

* * *

"Unemployed individual." An individual who at the time of hiring meets all of the following:

(1) Is hired on or after July 1, 2012.

(2) Certifies by signed affidavit, under penalty of perjury, that the individual has not been employed during the 60-day period ending on the date the individual begins employment.

(3) Is not employed by the company to replace another employee of the company unless the other employee separated from employment voluntarily or for cause.

(4) Will perform duties connected to the new job for at least 52 consecutive weeks.

* * *

Section 19.2. Sections 1803-B(b) and (c) and 1804-B(a), (d) and (e) of the act, added June 22, 2001 (P.L.353, No.23), are amended to read:

Section 1803-B. Application process.

* * *

(b) Creation of jobs.—[The] *Except as provided under this subsection, an applicant must agree to create at least 25 new jobs or to increase the applicant's number of employees by at least 20% within three years of the start date. A small business applicant must agree to increase the applicant's number of employees by at least 10% within three years after the start date.*

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

- (1) A description of the project.
- (2) The number of new jobs to be created.
- (3) The amount of private capital investment in the project.

(3.1) A statement authorizing the per job credit as a single year or multiple year credit.

(4) The maximum job creation tax credit amount the company may claim.

(5) A signed statement that the company intends to maintain its operation in this Commonwealth for five years from the start date.

(6) Such other information as the department deems appropriate.

* * *

Section 1804-B. Tax credits.

(a) Maximum amount.—A company may claim a tax credit of \$1,000 per new job created, *or \$2,500 per each new job created if the newly created job is filled by an unemployed individual*, up to the maximum job creation tax credit amount specified in the commitment letter.

* * *

(d) Tax credit term.—A company may claim the job creation tax credit for each new job created, as approved by the department, for a **period determined by the department but not to exceed** *one-year, two-year or three-year period as authorized by the department, except that no tax credit may be claimed for more than* five years from the date the company first submits a job creation tax credit certificate.

(e) Availability of tax credits.—Each fiscal year, **[\$22,500,000] \$10,100,000** in tax credits shall be made available to the department and may be awarded by the department in accordance with this article. In addition, in any fiscal year, the department may reissue or assign prior fiscal year tax credits which have been recaptured under section 1806-B(a) or (b) and may award prior fiscal year credits not previously issued. Prior fiscal year credits may be reissued, assigned or awarded by the department without limitation by section 1805-B(b).

Section 20. The definition of "community services" in section 1902-A of the act, amended May 7, 1997 (P.L.85, No.7), is amended and the section is amended by adding a definition to read:

Section 1902-A. Definitions.—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

"Charitable food program." An emergency food provider or a regional food bank as defined in section 2 of the act of December 11, 1992 (P.L.807, No.129), known as the "State Food Purchase Program Act."

"Community services." Any type of counseling and advice, emergency assistance, *food assistance* or medical care furnished to individuals or groups in an impoverished area.

* * *

Section 21. Section 1904-A(b.1) of the act, amended July 25, 2007 (P.L.373, No.55), is amended and the section is amended by adding a subsection to read:

Section 1904-A. Tax Credit.—* * *

(b.1) The secretary shall take into special consideration, when approving applications for neighborhood assistance tax credits, applications which involve:

(1) multiple projects in various markets throughout this Commonwealth; *and*

(2) *charitable food programs.*

(b.2) The secretary, in cooperation with the Department of Agriculture, shall promulgate guidelines for the approval or disapproval of applications for tax credits by business firms that contribute food or money to charitable food programs.

* * *

Section 21.1. Section 2005 of the act, amended July 25, 2007 (P.L.373, No.55), is amended to read:

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

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

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

(c) Within ninety days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom such assessment was made, may, by petition, request the Board of Finance and Revenue to review such action. Every petition for review filed hereunder shall state specifically the reason upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay, and that the facts therein set forth are true. If the petitioner be a corporation, joint-

stock association or limited partnership, the affidavit must be made by one of the principal officers thereof. A petition for review may be amended by the petitioner at any time prior to the hearing, as hereinafter provided. The Board of Finance and Revenue shall act finally in disposition of such petitions filed with it within six months after they have been received, and, in the event of the failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law and equity. Notice of the action of the Board of Finance and Revenue shall be given by mail, or otherwise, to the department and to the petitioner.

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

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

Section 22. Section 2102 of the act is amended by adding definitions to read:

Section 2102. Definitions.—The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

"Business of agriculture." The term shall include the leasing to members of the same family or the leasing to a corporation or association owned by members of the same family of property which is directly and principally used for agricultural purposes. The business of agriculture shall not be deemed to include:

(1) recreational activities such as, but not limited to, hunting, fishing, camping, skiing, show competition or racing;

(2) the raising, breeding or training of game animals or game birds, fish, cats, dogs or pets or animals intended for use in sporting or recreational activities;

(3) fur farming;

(4) stockyard and slaughterhouse operations; or

(5) manufacturing or processing operations of any kind.

* * *

"Members of the same family." Any individual, such individual's brothers and sisters, the brothers and sisters of such individual's parents and grandparents, the ancestors and lineal descendants of any of the foregoing, a spouse of any of the foregoing and the estate of any of the foregoing. Individuals related by the half blood or legal adoption shall be treated as if they were related by the whole blood.

* * *

Section 23. Section 2111 of the act is amended by adding subsections to read:

Section 2111. Transfers Not Subject to Tax.—* * *

(s) A transfer of real estate devoted to the business of agriculture between members of the same family, provided that after the transfer the real estate continues to be devoted to the business of agriculture for a period of seven years beyond the transferor's date of death and the real estate derives a yearly gross income of at least two thousand dollars (\$2,000), provided that:

(1) Any tract of land under this article which is no longer devoted to the business of agriculture within seven years beyond the transferor's date of death shall be subject to inheritance tax due the Commonwealth under section 2107, in the amount that would have been paid or payable on the basis of valuation authorized under section 2121 for nonexempt transfers of property, plus interest thereon accruing as of the transferor's date of death, at the rate established in section 2143.

(2) Any tax imposed under section 2107 shall be a lien in favor of the Commonwealth upon the property no longer being devoted to agricultural use, collectible in the manner provided for by law for the collection of delinquent real estate taxes, as well as the personal obligation of the owner of the property at the time of the change of use.

(3) Every owner of real estate exempt under this subsection shall certify to the department on an annual basis that the land qualifies for this exemption and shall notify the department within thirty days of any transaction or occurrence causing the real estate to fail to qualify for the exemption. Each year the department shall inform all owners of their obligation to provide an annual certification under this subclause. This certification and notification shall be completed in the form and manner as provided by the department.

(s.1) A transfer of an agricultural commodity, agricultural conservation easement, agricultural reserve, agricultural use property or a forest reserve, as those terms are defined in section 2122(a), to lineal descendants or siblings is exempt from inheritance tax.

Section 24. Sections 2702 and 2703 of the act, added October 18, 2006 (P.L.1149, No.119), are amended to read:

Section 2702. Petition for reassessment.

(a) General rule.—A taxpayer may file a petition for reassessment with the department within 90 days after the mailing date of the notice of assessment.

(a.1) Petition for review of tax adjustment not resulting in an increase in liability.—

(1) A petition for reassessment under subsection (a) may include a request for review of the department's adjustment of a tax item if the adjustment did not result in a tax increase in the year of adjustment but

may increase the tax due in a subsequent year. A request for review may include:

(i) Recalculation of the taxpayer's corporate net income tax net loss under Article IV as adjusted by the department.

(ii) Recalculation of the taxpayer's capital stock franchise tax average net income under Article VI as adjusted by the department.

(iii) Recalculation of the personal income tax basis of an asset under Article III as adjusted by the department.

(2) A taxpayer must file a petition for review under this subsection within 90 days of the mailing date of the department's notice of adjustment. A taxpayer's failure to file a petition under this subsection shall not prejudice the taxpayer's right to file a petition in a subsequent tax year.

(b) Special rule for shares taxes.—Notwithstanding any provision of law to the contrary, section 1104.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, shall constitute the exclusive method by which an appeal from the assessment of the tax imposed by Article VII or VIII may be made.

(c) Application to inheritance and estate taxes.—This section shall not apply to the taxes imposed by Article XXI. Part XI of Article XXI shall provide the exclusive procedure for protesting the appraisement and assessment of taxes imposed by Article XXI.

Section 2703. Petition procedure.

(a) Content of petition.—

(1) A petition for reassessment shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been erroneously assessed.

(iii) The basis upon which the taxpayer claims that the assessment is erroneous.

(iv) The basis upon which the taxpayer claims that the adjustment of a tax item is erroneous.

(2) A petition for refund shall state:

(i) The tax type and tax periods included within the petition.

(ii) The amount of the tax that the taxpayer claims to have been overpaid.

(iii) The basis of the taxpayer's claim for refund.

(3) The petition shall be supported by an affidavit by the petitioner or the petitioner's authorized representative that the petition is not made for the purpose of delay and that the facts set forth in the petition are true.

(b) Request for hearing.—Upon written request of the petitioner or when deemed necessary by the department, the department shall schedule a hearing to review a petition. The petitioner shall be notified by the department of the date, time and place where the hearing will be held.

(c) Decision and order.—The department shall issue a decision and order disposing of a petition on such basis as it deems to be in accordance with law. The department shall provide a written explanation of the basis for any denial of relief.

(d) Time limit for decision and order.—The department shall issue a decision and order disposing of a petition within six months after receipt of the petition. The petitioner and the department may agree to extend the time period for the department to dispose of the petition for one additional six-

month period. Notice of the department's decision and order disposing of the petition shall be issued to the petitioner.

(e) Exception to time limit for decision and order.—If at the time of the filing of a petition proceedings are pending in a court of competent jurisdiction wherein any claim made in the petition may be established, the department, upon the written request of the petitioner, may defer consideration of the petition until the final judgment determining the question or questions involved in the petition has been decided. If consideration of the petition is deferred, the department shall issue a decision and order disposing of the petition within six months after the final judgment.

(f) Failure of department to take action.—The failure of the department to dispose of the petition within the time period provided for by subsection (d) or (e) shall act as a denial of the petition. Notice of the department's failure to take action and the denial of the petition shall be mailed to the petitioner.

Section 25. The act is amended by adding a section to read:

Section 2707. *Compromise by secretary.*

(a) *General rule.*—A taxpayer who has filed a petition for relief under section 2703 or any other statutory provision allowing for administrative tax appeal to the department may propose a compromise of the amount of liability for tax, interest, penalty, additions or fees administered by the department. The compromise offer must be submitted prior to a final decision by the department on the petition. An informal conference, in person or by telephone, may be conducted by the department with representatives of the department and the petitioner. If the compromise offer is accepted, the department shall issue an order reflecting the compromise that shall not be subject to further appeal.

(b) *Bases for compromise.*—There shall be two bases for compromise:

- (1) *doubt as to liability; and***
- (2) *the promotion of effective tax administration.***

(c) *Ineligible for compromise.*—The following are not eligible for compromise:

- (1) *a petition of denial of property tax or rent rebate claim;***
- (2) *a petition of denial of a charitable tax exemption;***
- (3) *a petition of the revocation of a sales tax license;***
- (4) *a petition of jeopardy assessments; or***
- (5) *a petition arising under 4 Pa.C.S. Pt. II (relating to gaming).***

Section 26. Section 3003.1 of the act, amended May 7, 1997 (P.L.85, No.7) and repealed in part June 29, 2002 (P.L.559, No.89), is amended to read:

Section 3003.1. Petitions for Refunds.—(a) For a tax collected by the Department of Revenue, a taxpayer who has actually paid tax, interest or penalty to the Commonwealth or to an agent or licensee of the Commonwealth authorized to collect taxes may petition the Department of Revenue for refund or credit of the tax, interest or penalty. Except as otherwise provided by statute, a petition for refund must be made to the department within three years of actual payment of the tax, interest or penalty.

(b) The department may grant a refund or credit to a taxpayer for all tax periods covered by a departmental audit. If a credit is not granted by the department in the audit report, the taxpayer must file a petition for refund *for*

taxes paid with respect to the audit period within six months of the mailing date of the notice of assessment, determination or settlement *or within three years of actual payment of the tax, whichever is later.*

(d) In the case of amounts paid as a result of an assessment, determination, settlement or appraisal, a petition for refund must be filed with the department within six months of the [mailing date of the notice of assessment, determination, settlement or appraisal] *actual payment of the tax.*

(e) A taxpayer may petition the Board of Finance and Revenue to review the decision and order of the department on a petition for refund. The petition for review must be filed with the board within ninety days of the mailing date of a decision and order of the department upon a petition for refund.

Section 26.1. The act is amended by adding a section to read:

Section 3003.22. Administrative Bank Attachment for Accounts of Obligors to the Commonwealth.—(a) *Provided that an obligor has not entered into and is in compliance with a deferred payment plan with the department, the department may order the attachment and seizure of funds in an obligor's account that the department reasonably believes to hold property subject to a lien recorded in favor of the Commonwealth for tax, interest additions or penalties due to the Commonwealth. Upon receiving seized funds, the department shall apply the amount seized to the obligor's lien obligation.*

(b) (1) *If the department has a reasonable belief that an obligor's account holds property subject to a lien in favor of the Commonwealth, the department may order the attachment of funds in the obligor's account by sending a notice to the financial institution.*

(2) *The notice given to a financial institution attaching an account of the obligor shall be sent by an electronic format or any other reasonable manner as agreed to by the department and the financial institution.*

(3) *The notice shall include all of the following:*

(i) *The name of the obligor.*

(ii) *The amount of the Commonwealth's lien, including interest and penalty accrued up to forty-five days after the date of notice.*

(iii) *The current or last known address of the obligor.*

(iv) *The Social Security number, Federal employer identification number or other taxpayer identification number of the obligor.*

(v) *An order to immediately attach one or more accounts held by the financial institution in the name of the obligor for an aggregate amount equal to the lesser of the amounts in all accounts or the Commonwealth's lien.*

(c) (1) *Upon receipt of the notice described in subsection (b), the financial institution shall, by the end of the fifth business day following the date of the notice, attach one or more of the accounts of the obligor held by the financial institution for an aggregate amount equal to the lesser of:*

(i) *the total of the amounts in all the accounts of the obligor held by the financial institution as of the date of attachment; or*

(ii) *the amount stated in the notice.*

Upon the attachment and until the financial institution receives further notice from the department or on order of a court, as provided in this section, the financial institution may not allow any activity to reduce the amounts in any of the accounts below the amount of the attachment.

(2) Within five days after date of notice to the financial institution described in subsection (b), the financial institution shall inform the department that the financial institution has complied with the attachment order and shall specify the aggregate amount attached pursuant to the order.

(3) (i) The financial institution may assess a reasonable administrative fee against the accounts or the obligor in addition to the amount attached. An administrative fee may include a fee permitted to be assessed under an agreement between the obligor and the financial institution in connection with the early withdrawal of a certificate of deposit attached under this section.

(ii) In the case of insufficient funds to cover both the fee authorized by subparagraph (i) and the amount identified in the notice under subsection (b), the financial institution may first deduct the fee from the amount attached and retain it from the amount seized and forwarded to the department as provided in this section.

(d) (1) Except as otherwise provided in paragraph (3), no later than five business days after the date of the notice in subsection (b)(2), the department shall send a notice to the obligor by first class mail to the obligor's current or last known address and may attempt to deliver personal notice to the obligor.

(2) The notice shall contain the following information:

(i) The address of the department.

(ii) The telephone number, address and name of a contact person at the department.

(iii) The name and Social Security number, Federal employer identification number or other taxpayer identification number of the obligor.

(iv) The current or last known address of the obligor.

(v) The total amount of the Commonwealth's lien owed by the obligor, including interest and penalty accrued up to forty-five days after the date of notice.

(vi) The date the notice is being sent.

(vii) A statement informing the obligor that the department has ordered the financial institution to attach the amount of the Commonwealth's lien owed by the obligor from one or more of the accounts of the obligor.

(viii) For each account of the obligor, the name of the financial institution that has been given notice to attach amounts as required by this section.

(ix) A statement that the order may be challenged or relief from the order requested in accordance with subsection (e).

(x) A statement informing the obligor that unless a timely challenge is made by the obligor, the financial institution or an account holder of interest under subsection (e), the department shall notify the financial institution to seize the amount attached by the financial institution and forward it to the department.

(3) The department shall not be required to send the notice described under this subsection if, prior to the time that the notice must be sent, the department and the obligor agree to an arrangement under which the obligor will pay amounts owed under the Commonwealth's lien.

(e) (1) An obligor, the financial institution or an account holder of interest may challenge the actions of the department under this section by

filing a motion with the court of common pleas within ten days of the date of the notice sent under subsection (d).

(2) An obligor, the financial institution or an account holder of interest may challenge or seek relief from the actions of the department based on:

(i) a mistake as to any of the following:

(A) The identity of the obligor.

(B) The ownership of the account.

(C) The contents of the account.

(D) The amount of the lien obligation due.

(ii) the exclusion of the account from attachment under this section;

(iii) the failure of the department to properly record the lien upon which the attachment is based;

(iv) the failure of the department to send notice to the obligor of the assessment or determination of the tax, interest, penalties or addition to tax upon which the attachment is based;

(v) severe economic hardship;

(vi) a request for spousal relief from joint liability; or

(vii) any other good cause.

(3) Except as provided in paragraph (2)(iv), an obligor, the financial institution or an account holder of interest may not challenge the actions of the department based on a mistake or error in the original assessment underlying a lien against the obligor.

(f) (1) If a timely challenge or request from relief is not made by the obligor, the financial institution or an account holder of interest under subsection (e), the department shall direct the financial institution to:

(i) seize the amount attached by the financial institution and forward it to the department;

(ii) reduce the amount attached by the financial institution to a revised amount as stated by the department, seize the revised amount and forward it to the department and release the balance of the account; or

(iii) release the amount attached by the financial institution.

(2) The department may direct a financial institution to seize and forward attached funds before the time for filing a timely challenge under subsection (e) upon agreement among the department, the obligor and, in cases where the department is aware of an account holder of interest, the account holder of interest.

(g) (1) If a determination is made by the court, pursuant to a challenge or request for relief under subsection (e), that the account of the obligor should not have been attached, the department shall notify the financial institution, in the manner specified in subsection (b)(2), to release the amount attached by the financial institution.

(2) If a determination is made by the court, pursuant to a challenge or request for relief under subsection (e), to reduce the amount attached by the financial institution, the department shall notify the financial institution, in the manner specified in subsection (b)(2), to revise the amount as stated by the department, to seize and forward the revised amount to the department and to release the balance of the account attached by the financial institution.

(3) If a determination is made by the court, pursuant to a challenge or request for relief made under subsection (e), that the attachment by the financial institution was proper, the department shall notify the financial institution, in the manner specified in subsection (b)(2), to seize the

amount attached by the financial institution and forward it to the department.

(h) A financial institution that complies with an order and notice from the department under this section shall not be criminally or civilly liable to any person, including the department, the obligor or any account holder of interest, for any of the following:

- (1) disclosing information to the department under this section;
- (2) attaching an account as directed by the department;
- (3) sending any amount seized to the department;
- (4) wrongful dishonor or any other claim relating to the attachment and seizure of any account as ordered by the department; or
- (5) any other action taken in good faith to comply with the requirements of this section.

(i) A financial institution shall not be required to reimburse fees assessed against an account or an obligor as a result of the department instituting an action under this section or as otherwise permitted by law or authorized by contract even if there is a successful challenge or relief is granted under subsection (e).

(j) (1) If, under the provisions of this section, a financial institution fails to attach accounts as required in a timely manner or fails to forward the proper amount of funds attached to the department at the time and in the manner required by this section, the financial institution may be subject to a penalty of five per cent of the amount of funds which should have been attached or forwarded for each month or fraction thereof from the date the funds should have been attached or forwarded to the date the funds are attached or forwarded. The total amount of the penalty shall not exceed fifty per cent of the proper amount of funds which should have been attached or forwarded.

(2) The penalty imposed by this section shall be assessed, enforced, administered or collected under the provisions of Article II.

(k) This section shall not be construed to prohibit the department or any other Commonwealth agency from collecting obligations due from an obligor in any other manner authorized by law.

(l) No financial institution may be required to notify an obligor or an account holder of interest of a request for information under this section by the department or a court.

(m) Prior to attaching an account under this section, the department shall develop guidelines:

- (1) describing its tax collection procedures;
- (2) describing the rights and remedies available to taxpayers;
- (3) disclosing the circumstances in which the department may attach an account under this section;
- (4) describing the policies regarding spousal relief and severe economic hardship relief;
- (5) advising financial institutions of the requirements of this section; and
- (6) describing the department's policies and procedures used to attach and seize accounts under this section.

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

"Account." (1) Any of the following:

(i) Funds from a demand deposit account, checking account, negotiable order of withdrawal account, savings account, time deposit account, money market mutual fund account or certificate of deposit account.

(ii) Funds paid toward the purchase of shares or other interest in an entity as described in paragraphs (1) and (2) of the definition of "financial institution."

(iii) Funds or property held by a depository institution as described in paragraph (3) of the definition of "financial institution."

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

(i) An account subject to a security interest, control agreement or pledged security for a loan or other obligation.

(ii) Funds or property deposited to an account after the time that a financial institution initially attaches the account.

(iii) An account that a financial institution has a present right to exercise a right of setoff either under an agreement between the financial institution and the obligor or otherwise under applicable law.

(iv) An account that has an account holder of interest named as an owner on the account.

(v) An account that an obligor does not have an unconditional right of access.

(vi) An account that can not be attached under Federal law.

"Account holder of interest." A person, other than an obligor of an account, who asserts an interest in an account based upon ownership, possession of a security interest, lien or judgment.

"Department." The Department of Revenue of the Commonwealth.

"Financial institution." Any of the following:

(1) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1813(c)).

(2) A Federal credit union or State credit union as defined in section 1752(1) of the Federal Credit Union Act (48 Stat. 1216, 12 U.S.C. § 1752(1)).

(3) A benefit association, safe deposit company, money market mutual fund or similar entity doing business in this Commonwealth that holds property or maintains accounts reflecting property belonging to others.

"Obligor." Any of the following:

(1) An entity engaged in a business whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(2) An individual operating as a sole proprietor whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(3) A shareholder, member or partner of a pass-through entity whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

(4) A corporate officer or other responsible individual who has been assessed pursuant to the provisions of section 225 or 320 and whose property is subject to a Commonwealth tax lien or liens totaling at least one thousand dollars (\$1,000).

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

Section 27. A reference in any law to the former definition of "family farm corporation" or "family farm partnership" in section 1101-C of the act shall be deemed to be references to a "family farm business" under section 1101-C of the act.

Section 27.1. A company may claim the tax credit under section 1804-B of the act for each newly created job filled by an unemployed individual on or after the effective date of this section.

Section 27.2. The provisions of this act are severable.

Section 28. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of sections 217 and 222 of the act.

(2) Section 202.2 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

(3) The General Assembly declares that the repeal under paragraph (4) is necessary to effectuate the amendment of section 1709-B(a) of the act.

(4) Section 1602-H of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

(5) (Reserved).

(6) (Reserved).

(7) (Reserved).

(8) (Reserved).

(9) The General Assembly declares that the repeal under paragraph (10) is necessary to effectuate the addition of Article XVII-H of the act.

(10) The provisions of 27 Pa.C.S. § 6104(d.2)(2) are repealed.

Section 29. The provisions of 61 Pa. Code § 91.222 (relating to acquired family farm partnership) are abrogated.

Section 29.1. The amendment of sections 217 and 222 of the act are a continuation of section 202.2 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code. Except as otherwise provided in sections 217 and 222 of the act, all activities initiated under section 202.2 of The Fiscal Code shall continue and remain in full force and effect and may be completed under sections 217 and 222 of the act. Orders, regulations, rules and decisions which were made under section 202.2 of The Fiscal Code and which are in effect on the effective date of the amendment of sections 217 and 222 of the act shall remain in full force and effect until revoked, vacated or modified under section 217 or 222 of the act.

Section 30. The following shall apply:

(1) The amendment of sections 217 and 222 of the act shall apply to tax returns due after September 30, 2012.

(2) The amendment or addition of sections 331(e), (e.1) and (e.2), 352(d)(2), 405 and 406 of the act shall apply to tax years beginning on or after January 1, 2013.

(3) (Reserved).

(4) Except as provided in paragraph (5), the amendment or addition of sections 1101-C, 1102-C.3(19), (19.1) and (20), 1102-C.4 and 1102-C.5 of the act shall apply retroactively to any document made, executed, delivered, accepted or presented for recording on or after July 1, 2010.

(5) The addition of section 1102-C.5(a)(3) of the act shall not apply to a transaction or a series of transactions occurring in part or entirely before January 1, 2013.

(6) The addition of Article XVII-G of the act shall apply to the purchase of ethane for the period after December 31, 2016, and before January 1, 2043.

(7) The amendment or addition of sections 2102 and 2111(s) and (s.1) of the act shall apply to the estates of decedents dying after June 30, 2012.

(8) The following provisions shall apply to tax periods which, on the effective date of this section, are open under the act; to administrative appeals pending on the effective date of this section; and to judicial appeals pending on the effective date of this section:

(i) The addition of section 2702(a.1) of the act.

(ii) The addition of section 2703(a)(1)(iv) of the act.

(9) The amendment of section 3003.1 of the act shall apply to petitions filed after July 1, 2012.

Section 31. This act shall take effect as follows:

(1) The addition of sections 1102-C.5(a)(3) and 3003.22 of the act shall take effect January 1, 2013.

(2) The amendment of the definition of "wholesaler" in section 1201 of the act shall take effect in 60 days.

(3) The amendment of sections 217 and 222 of the act shall take effect October 1, 2012.

(4) Section 28(2) of this act shall take effect October 1, 2012.

(4.1) The addition of Articles XVII-H and XVII-I of the act shall take effect July 1, 2013.

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

APPROVED—The 2nd day of July, A.D. 2012

TOM CORBETT